Description of document:	Reports from Various Department of Transportation (DOT) Inspector General (OIG) Investigations 2012-2013
Requested date:	22-June-2020
Release date:	30-September-2021
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Source of document:	FOIA request DOT OIG FOIA Requester Service Center 1200 New Jersey Avenue, S.E., 7th Floor Washington, DC 20590 Online FOIA Request Form FOIA.gov Preferred during COVID-19 Pandemic: Online FOIA Request Form FOIA.gov

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

September 30, 2021

RE: FOIA Request, Control No.: FI-2020-0109

This letter is in response to your Freedom of Information Act (FOIA) request, dated June 19, 2020, sent to the U.S. Department of Transportation (DOT) Office of Inspector General (OIG). Your request was received by the DOT OIG FOIA Office on June 22, 2020. You requested the following records:

"A copy of the final report, Report of Investigation, closing memo, referral memo or other concluding documents for each of the following DOT OIG Investigations closed during 2013. I08C0003620202 I11H0010903 I12G005SINV I13E002SINV I08A0003430600 I08Z0003090300 I09G0000150300 I10C000032CC I12G0010300 I12G003SINV I12E009SINV I12E003CCU I12E022SINV I12G0210500 I13E019SINV I07Z000220SINV I10Q000005CC I12G0080500 I12A0050401 I12E019SINV I12A0050300 I12A0040202 I13E013SINV I10C0000080200 I10P0000520300 I11G0030500 I11G0050300 I11E010SINV I12E012SINV I11E002CCU I11G0270500 I12G0020300."

Enclosed are 172 pages of documents responsive to your request. Some information was redacted or withheld pursuant to exemptions provided by the FOIA (5 U.S.C. §552 (b)(5), (b)(6), (b)(7)c) and (b)(7)(e)[1].

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c)

[1] Exemption 5 protects information encompassed by the deliberative process privilege. Exemption 6 protects names and any data identifying individuals if public disclosure would be a clearly unwarranted invasion of privacy. Exemption 7(C) protects personal information in law enforcement records. It prevents the disclosure of law enforcement information that could reasonably constitute an unwarranted invasion of personal privacy. Exemption (7)(e) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For any further assistance, you may contact Attorney-Advisor/FOIA Officer Barbara Hines at (202) 680-3084, Barbara.Hines@oig.dot.gov. You may also contact our FOIA Public Liaison, Marie Miller at (202) 366-1959, Marie.Miller@oig.dot.gov.

If you are not satisfied with the DOT OIG's determination in response to this request, you may administratively appeal by writing to the Chief Counsel for the Office of Inspector General, Department of Transportation, 7th Floor West (JL), 1200 New Jersey Avenue, S.E. Washington, DC 20590. Appeals to the Chief Counsel should be prominently marked as a "FOIA Appeal." If you prefer, your appeal may be sent via electronic mail to FOIAAPPEALS@oig.dot.gov. An appeal must be received within 90 days of the date of this letter and should contain any information and arguments you wish to rely on. The Chief Counsel's determination will be administratively final.

You also have the right to seek dispute resolution services from the FOIA Public Liaison (contact information shown above) or the Office of Government Information Services (https://ogis.archives.gov) via phone—202-741-5770 / toll free—1-877-684-6448; fax—202-741-5769; or email— ogis@nara.gov.

Please be advised, due to the COVID-19 pandemic the DOT OIG FOIA Office is currently operating on a remote basis only. Therefore, there may be significant delays in the processing of current and future FOIA requests received via postal mail. Likewise, the delivery of printed copies will be impacted and experience significant delays.

Until further notice, we recommend (when possible) that FOIA requests be submitted using our online portal at https://www.oig.dot.gov/FOIA or the National FOIA portal at https://www.foia.gov/. We apologize for any inconvenience this may cause. Thank you for your patience.

Sincerely,

Siera Griffin
Government Information Specialist

Enclosure

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I08C0003620202	06/28/2012
TITLE	PREPARED BY SPECIAL AGENT	STATUS
Highland Associates Clarks Summit, PA 18411	(b)(6), (b)(7)c	Final
	DISTRIBUTION	(b)(6), (b)(7)c 1/3
Theft of Government Funds	JRI-2 (1)	APPROVED DS

DETAILS

This investigation was based on a referral from the United States Department of Transportation, Office of Inspector General Hotline Complaint Center. The complainant alleged that federal funds were misused on the Scranton Intermodal Transportation Center. This contract was funded, in part, through the Federal Transit Administration (FTA) and was awarded to HIGHLAND ASSOCIATES. The County of Lackawanna Transit System (COLTS) was responsible for awarding the contract and distributing the federal funds. COLTS is a County entity and elected County officials appoint individuals to the Board which oversees COLTS. In 1997, COLTS received FTA funding, though an earmark designation, for the construction of the Intermodal Center. (Attachment 1)

The investigation revealed that the county initially awarded the $4 Million Intermodal Transportation Center contract to (b)(6), (b)(7)c However, corrupt officials revoked the contract awarded to (b)(6), (b)(7)c and then moved to award the contract to HIGHLAND ASSOCIATES. Principals of HIGHLAND ASSOCIATES admitted to the government, with the agreement of immunity, that the company paid bribes to County Commissioners Robert C. CORDARO (aka Bobby CORDARO) and Anthony J. MUNCHAK (aka A.J. MUNCHAK). In turn, the county awarded the contract to HIGHLAND ASSOCIATES.

The Federal Transit Administration conducted a tri-annual review of the Scranton Intermodal Transportation Center and noted deficiencies. The FTA recovered $907,340 in grant funds from COLTS because the FTA review determined that the funds paid towards the Intermodal Transportation Center were misused. HIGLHAND ASSOCIATES continued to submit invoices alleging work on the project, when the project was actually held up due to ongoing litigation concerning the real estate property involved. (Attachment 2)

A key interview determined that CORDARO and MUNCHAK forced the (b)(6), (b)(7)c to actually negate the (b)(6), (b)(7)c contract and award it to HIGHLAND

ASSOCIATES. Essentially, CORDARO ordered (b)(6), (b)(7)c to remove (b)(6), (b)(7)c and award insert HIGHLAND ASSOCIATES.

On March 16, 2010, a grand jury in the Middle District of Pennsylvania returned a 40 count indictment charging CORDARO and MUNCHAK with criminal conspiracy, theft, bribery, extortion, and money laundering offenses. On March 29, 2011, the government reconvened the federal grand jury which returned a superseding indictment against CORDARO and MUNCHAK, which merely clarified the original indictment. (Attachments 3 and 4)

During the twelve day trial, (b)(6), (b)(7)c, testified that (b)(6), (b)(7)c provided nearly $90,000 in bribes and kickbacks to CORDARO and MUNCHAK to maintain contracts within the county, including the Intermodal Transportation Center.

On June 21, 2011, the federal jury convicted CORDARO and MUNCHAK of numerous crimes including Conspiracy to Commit Theft or Bribery Concerning Programs Receiving Federal Funds; Bribery Concerning Programs Receiving Federal Funds; Conspiracy to Commit Extortion under Color of Official Right; Money Laundering, Racketeering, Racketeering Conspiracy and Income Tax Evasion.

On January 30, 2012, the Honorable Judge Caputo sentenced CORDARO and MUNCHAK. The court sentenced CORDARO to 132 months in prison, ordered him to forfeit $355,000, pay $98,856 in restitution to the IRS, and serve three years supervised release. The forfeiture of $355,000 represented the proceeds from criminal activity. Meanwhile, the court sentenced MUNCHAK to 84 months in prison, a $5,000 fine, an $800 special assessment, and serve three years supervised release. (Attachments 5 and 6)

In March 2010, CORDARO and MUNCHAK were referred for suspension/debarment. On March 30, 2010, the FTA suspended both CORDARO and MUNCHAK. However, as of the date of this report, the FTA decision concerning the suspension/debarment of HIGHLAND ASSOCIATES is pending. (Attachments 7 and 8)

This investigation is closed.

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Index of Attachments

No.	Description
1	Hotline Complaint, dated October (b)(6), (b)(7)C 2006.
2	FTA Letter to COLTS, dated August 30, 2007.
3	Indictment, United States District Court, Middle District of Pennsylvania, Criminal No. 3:10CR75, filed March 16, 2010.
4	Second Superseding Indictment, United States District Court, Middle District of Pennsylvania, Criminal No. 3:10CR75, filed March 29, 2011.
5	Judgment in a Criminal Case, dated February 13, 2012, against CORDARO.
6	Judgment in a Criminal Case, dated February 14, 2012, against MUNCHAK.
7	FTA letter to CORDARO, dated March 30, 2010.
8	FTA Letter to MUNCHAK, dated March 30, 2010.

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12A0040202	DATE 9/24/2013
TITLE Kenneth W. Smith, Jr. Philadelphia, PA	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-2 (1)	(b)(6), (b)(7)c 1/3
Interference with Aircraft		APPROVED DS

DETAILS

On September 6, 2012, at approximately 7:20 a.m., the Philadelphia Police Department, Operations Unit, Philadelphia International Airport (PHL) received a telephone call reporting that a passenger, (b)(6), (b)(7)c , possessed drugs and "liquid explosives" and was on route to Dallas/Ft. Worth International Airport. As a direct result of this telephone call, federal, state, and local law enforcement responded and ordered the aircraft, identified as US Airways Flight 1267, returned to PHL. The DOT-OIG investigated this incident as a potential criminal violation of DOT hazardous materials regulations.

At the time of the call, the Federal Aviation Administration Air Traffic Control Tower personnel at PHL determined that the aircraft was approximately 90 miles away from Philadelphia, therefore out of its control space. The pilots were notified of the order to return to the airport and did so, parking the aircraft in the assigned remote location. SWAT teams removed (b)(6), (b)(7)c from the aircraft. The aircraft, passengers, and baggage were re-screened with negative results. (Attachment 1)

(b)(6), (b)(7)c cooperated with authorities and revealed that (b)(6), (b)(7)c suspected an individual named "Kenny" provided false information related to explosives on an aircraft to PHL authorities. (Attachment 2)

Within 10 hours, "Kenny" was further identified as Kenneth W. Smith, Jr. and the agents identified the payphone from which Smith made the call. Kenneth Smith reportedly lived with (b)(6), (b)(7)c (b)(6), (b)(7)c . Smith advised that he and another person discussed calling PHL Police on September 6, 2012, to report that (b)(6), (b)(7)c was carrying narcotics through PHL. When Smith made the telephone call, he surmised that PHL Police were not necessarily interested in just alleged drug contraband, so he added the false report that (b)(6), (b)(7)c also carried "liquid explosives" with (b)(6), (b)(7)c at the airport. (Attachment 3)

On September 7, 2012, a federal Criminal Complaint and Arrest Warrant charging him malicious false information about an explosive and false information and hoaxes. (Attachments 4 and 5)

On November 5, 2012, the US Attorneys Office filed a two count information charging Smith with malicious false information about an explosive and false information and hoaxes. (Attachment 6)

On January 14, 2013, Smith pled guilty in federal court and admitted that he provided false information which could have been reasonably believed and that the false information was malicious and involved an explosive. (Attachment 7)

On April 22, 2013, Smith was sentenced to serve 15 months incarceration, 36 months supervised release, $200 in special assessments, 100 hours of community service each year of supervised release (aggregate total of 300 hours), and ordered restitution in the amount of $17,390.71, the costs incurred by passengers and US Airways. (Attachment 8)

This investigation is closed.

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Index of Attachments

No.	Description
1	Memorandum of Activity, (b)(6), (b)(7)c , September 11, 2012.
2	Memorandum of Activity, (302) (b)(6), (b)(7)c , dated September 13, 2012.
3	Memorandum of Activity (302) Kenneth W. Smith, Jr., dated September 13, 2012.
4	Criminal Complaint, dated September 7, 2012.
5	Arrest Warrant, dated September 7, 2012.
6	Information, U.S. District Court, Eastern District of Pennsylvania, dated November 5, 2013.
7	Guilty Plea Agreement, dated November 5, 2013.
8	J&C, Smith, dated April 22, 2013.

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION TITLE	INVESTIGATION NUMBER	DATE
(b)(6), (b)(7)c and (b)(6), (b)(7)c	I07Z000220SINV	August 30, 2013
	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-9 (1)	1/3
VIOLATION(s): Title 49, CFR		APPROVED WS

DETAILS:

The investigation was initiated by JI-3 in March 2007, upon receipt of a combined complaint signed by (b)(6), (b)(7)c and (b)(6), (b)(7)c alleging that Federal Motor Carrier Safety Administration (FMCSA) employees (b)(6), (b)(7)c (b)(6), (b)(7)c and (b)(6), (b)(7)c (b)(6),, (b)(7)c violated sections of Title 49 Code of Federal Regulations regarding assigning safety ratings pursuant to Compliance Reviews (CR) and the procedures contained in the FMCSA Field Operations Training Manual. Further,)(6), (b)(7 alleged that (b)(6), (b)(7)c and (b)(6), (b)(7)c showed favoritism towards two trucking companies, (b)(6), (b)(7)c and (b)(6), (b)(7)c (b)(6), (b)(7)c by not enforcing motor carrier regulations, thereby allowing the companies to avoid fair and impartial penalties and enforcement actions. In October 2009, JRI-9 Seattle was asked to investigate this matter to determine if a criminal referral to the United States Attorney's Office for possible criminal action and/or to FMCSA for potential or administrative action was warranted.

JRI-9 conducted an investigation that included interviews of (b)(6), (b)(7)c and other knowledgeable FMCSA personnel. Complainant (b)(6), (b)(7)c was not interviewed, (b)(6), (b)(7)c (b)(6), (b)(7)c and would not cooperate with the investigation.

JRI-9's investigation of the allegations determined that the allegations made by (b)(6), (b)(7)c and (b)(6), (b)(7)c were unfounded. Specifically, the investigation determined that (b)(6), (b)(7)c as the (b)(6), (b)(7)c was acting within the scope of (6), (b) duties in that capacity when (6), (b)(changed the "violations and other

information" Montana Highway Patrol (b)(6), (b)(7)c had originally cited in (b)(6), (b)(August 2005 CR review of (b)(6), (b)(7)c suggested (b)(6), (b)(7)c change the CFR cites because (b)(6), (b)(did not concur with those (b)(6), (b)(7)c used. (b)(6), (b)(7)c believed the CFR regulations (b)(6), (b)(suggested (b)(6), (b)(7)c use more adequately addressed and supported the violations (b)(6), (b)(7)c cited in (b)(6), (b)(report. (b)(6), (b)(7)c took issue with (b)(6), (b)(7)c because by using (b)(6), (b)(7)c suggested CFR cites, the overall rating assigned the carrier in the CR would change from "unsatisfactory" to "conditional."

Although (b)(6), (b)(7)c said (b)(6), (b)(took issue with (b)(6), (b)(7)c suggestion to (b)(6), (b)(7)c to change the violations (b)(6), (b)(7)c initially cited, as is noted in the complaint (b)(6), (b)(made with OIG, the violations and ultimately the CR rating were changed while (b)(6), (b)(7)c was (b)(6), (b)(7)c (b)(6), (b)(7)c Moreover, (b)(6), (b)(7)c acknowledged that (b)(6), (b)(7)c never forced or even directed (b)(6), (b)(7)c to change (b)(6), (b)(CR review; instead, (b)(6), (b)(7)c asked that (b)(6), (b)(7)c to consider amending the rating (b)(6), (b)(7)c initially assigned to the (b)(6), (b)(CR to that (b)(6), (b)(7)c considered to more appropriately address the violations. It should also be noted that (b)(6), (b)(7)c did not take issue with the changing of the cites/rating until some nine months later, after (b)(6), (b)(7)c mentioned it to (b)(6), (b)(informally" and after (b)(6), (b)(7)c (including (b)(6), (b)(7)c made several complaints to (b)(6), (b)(7)c about ethics rules (b)(6), (b)(7)c was alleged to have violated. These allegations became the basis of a complaint (b)(6), (b)(7)c ultimately forwarded in a referral made to the OIG Hotline for investigation. (b)(6), (b)(7)c filed the complaint JRI-9 was tasked with investigating on March 2007, just prior to JI-3 providing its investigative findings to FMCSA in a Report of Investigation (ROI), dated May 25, 2007.

When interviewed by JRI-9 (b)(6), (b)(7)c also acknowledged that (b)(6), (b)(7)c did not "force" (b)(6), (b)(to make the cite changes. (b)(6), (b)(7)c said (b)(6), (b)(7)c gave (b)(6), (b)(plausible reasons for changing the violations (b)(6), (b)(suggested (b)(6), (b)(7)c use. Moreover, (b)(6), (b)(7)c said (b)(6), (b)(never made (b)(6), (b)(concerns about the changes to the CR (b)(6), (b)(7)c suggested to (b)(6), (b)(7)c until late October 2006, long after the CR was completed.

With respect to the allegations concerning (b)(6), (b)(7)c investigation of (b)(6), (b)(7)c had no direct knowledge of the investigation or any of the concerns (b)(6), (b)(7)c raised in their joint complaint made to OIG in March 2007, JRI-9 was tasked with investigating. As noted above, (b)(6), (b)(7)c was not responsive to repeated requests by JRI-9 for additional information regarding those allegations. As such, these allegations are deemed unfounded. However, it should be noted that the MSPB addressed similar allegations made in (b)(6), (b)(7)c appeal to the MSPB regarding the disciplinary action proposed by FMCSA in response to JI-3's investigative findings contained in the ROI dated May 25, 2007.

In its June 17, 2009 decision, the MSPB noted that the complaint authored by (b)(6), (b)(7)c and (b)(6), (b)(7)c (which are identical to those made to JRI-9) criticized the FMCSA investigation of the (b)(6), (b)(7)c accident and its subsequent compliance review of the company's safety practices. (b)(6), (b)(7)c and (b)(6), (b)(7)c believed that as a matter of public safety, more severe action sufficient to place the company out of service should have been taken based on (b)(6), (b)(7)c compliance history and ongoing behavior. (b)(6), (b)(7)c reviewed the accident report authored by (b)(6), (b)(7)c and concluded the agency had handled the situation appropriately, which served as the basis of the allegations against (b)(6), (b)(7)c made by (b)(6), (b)(7)c and (b)(6), (b)(7)c FMCSA took issue with (b)(6), (b)(7)c and (b)(6), (b)(7)c allegations, and specifically, a number of factual assertions contained in their complaint regarding (b)(6), (b)(7)c FMCSA contended that the matter was essentially a disagreement in expert judgment regarding the degree of enforcement action necessary to bring a carrier into voluntary compliance with applicable regulations.

In response to these allegations made by (b)(6), (b)(7)c and (b)(6), (b)(7)c and assertions made by representatives of FMCSA, the MSPB ruled that, "even assuming that the appellant (b)(6), (b)(7)c and (b)(6), (b)(7)c has the better of this expert disagreement, to the point that public safety was actually impacted through contrary approach pursued by Montana Division investigators, there is no evidence that anyone, inside or outside the agency ever shared this belief, or that the agency ever felt the need to conceal its handling of the matter."

In light of the above facts and circumstances disclosed during this investigation, JRI-9 is closing this matter, with no further action anticipated.

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DETAILS:

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I08A0003430600	3/4/2013
TITLE	PREPARED BY SPECIAL AGENT	STATUS
Interstate Helicopters Incorporated, 5809 Phillip J Rhoads Avenue, Bethany, OK 73008 (b)(6), (b)(7)c	(b)(6), (b)(7)c	Final
Violation(s): 18 USC §1001 - False Statements Violation: 18 USC § 371- Conspiracy	DISTRIBUTION JRI-6	1/2
		APPROVED MDS

Synopsis:

This investigation was predicated on information received from the Federal Aviation Administration (FAA), Flight Standard Service, concerning an unauthorized charter operations being conducted by Interstate Helicopter Incorporated from Wiley Post Airport. On March 4, 2008, a Cessna Citation jet, FAA registration number N113SH, crashed shortly after takeoff from Wiley Post Airport in Bethany, Oklahoma. Two crew members and three passengers were killed. A subsequent investigation conducted by the National Transportation Safety Board (NTSB) determined that the aircraft crashed due to engine failure when the plane struck birds in flight.

An FAA administrative investigation determined that the flight was operated as a charter by IHI without FAA knowledge or FAA authorization as required under U.S. Code of Federal Regulations (CFR) 14 part 119 and 135. IHI has held a FAA CFR 14 part 135 authorization for the charter of helicopters since 1981 but not authorized to conduct fixed wing aircraft charter flights.

DETAILS

The DOT-OIG investigation included multiple interviews of former IHI employees and the review of NTSB hearing transcripts, reports and documentation as well as FAA reports, statements, and documentation. The investigation determined that IHI conducted twenty-three charter flights for United Engines (UE) from 2005 until the fatal crash in March, 2008.

The investigation determined that there was evidence that IHI (b)(6), (b)(7)c (b)(6) engaged in a conspiracy to conduct fixed wing aircraft air charter operations without FAA knowledge or authorization and took steps to conceal (6), (b)(actions. The DOT-OIG investigation determined that there is evidence that false statements were allegedly made to the NTSB investigators by (b)(6), (b)(7)c during the NTSB investigation following the fatal crash. Similarly, alleged false statements were made to the FAA investigators probing the fatal crash as well as other flights conducted as a charter operation by IHI, (b)(6), (b)(7)c

As a result of the OIG's initial investigative work, the FAA issued IHI an emergency order of revocation on September 12, 2008 which removed its' authority to operate any aircraft, including rotorcraft. The FAA certified IHI to resume rotorcraft part 135 charter operations on January 20, 2009.

The DOT-OIG investigative findings were presented to Assistant U.S. Attorney (b)(6), (b)(7)c of the U.S. Attorney's Office for the Western District of Oklahoma. On January 22, 2013,)(6), (b)(7) advised that after careful consideration of the investigative materials presented by DOT-OIG, the U.S. Attorney's Office for the Western District of Oklahoma declined to seek prosecution.

This investigation is closed with no further action pending by JRI-6.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I08Z0003090300	01/28/2013
TITLE Major Airlines Antitrust Investigation	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS FINAL
	DISTRIBUTION JRI-3	APPROVED BY KAJ

PREDICATION:

This case was developed through the Department of Justice, Antitrust Division. This is a large-scale DOJ Anti-Trust investigation, involving alleged price fixing, bid rigging and bid collusion by multiple cargo and passenger airline companies flying into and out of the United States. DOJ has requested the assistance of the FBI, Postal-OIG and DOT-OIG to assist with the investigation, as it involves multiple targets from around the world.

SUMMARY:

In brief, this DOJ investigation, led by the U.S. Department of Justice, Antitrust Division, substantiated the Antitrust violations with numerous airlines conducting business with the United States of America. In total, DOJ was successful in recovering a total of $1,943,334,214 in fines from businesses involved in the antitrust violations.

IDENTIFICATION:

Subjects		Status
Target Name:		Immunized
Target Name:	(b)(6), (b)(7)c	Immunized
Target Name:		Immunized
Target Name:	Tampa Cargo -	Immunized
Target Name:	Virgin Atlantic Airways -	Immunized

Target Name: All Nippon Airways - Prosecuted
Target Name: Asiana Airlines - Prosecuted
Target Name: (b)(6), (b)(7)c - Prosecuted
Target Name: British Airways PLC - Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted
Target Name: Cargolux Airlines International - Prosecuted
Target Name: Cathay Pacific Airways - Prosecuted
Target Name: China Airlines - Prosecuted
Target Name: (b)(6), (b)(7)c - Prosecuted
Target Name: El Al Isreal Airlines - Prosecuted
Target Name: EVA Airways - Prosecuted
Target Name: Florida West International Airways - Prosecuted
Target Name: · Prosecuted
Target Name: - Prosecuted
Target Name: (b)(6), (b)(7)c - Prosecuted
Target Name: Prosecuted
Target Name: Japan Airlines Co., Ltd. - Prosecuted
Target Name: - Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted
Target Name: Prosecuted
Target Name: KLM Royal Dutch Airlines - Prosecuted
Target Name: Korean Air Lines Co., LTD. - Prosecuted
Target Name: LAN Cargo, S.A. - Prosecuted
Target Name: - Prosecuted
Target Name: Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted
Target Name: Ullings - Prosecuted
Target Name: · Prosecuted
Target Name: Nippon Cargo Airlines - Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted
Target Name: Northwest Airlines - Prosecuted
Target Name: Polar Air Cargo - Prosecuted
Target Name: Qantas Airways, Ltd. - Prosecuted
Target Name: - Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted
Target Name: Scandinavian Airlines Sverge Cargo - Prosecuted
Target Name: Singapore Airlines Cargo, Ltd. - Prosecuted
Target Name: Prosecuted
Target Name: (b)(6), (b)(7)c Prosecuted

Target Name:	(b)(6), (b)(7)c -	Prosecuted
Target Name:		Prosecuted
Target Name:	Air Canada -	Removed from Investigation
Target Name:	Air New Zealand -	Removed from Investigation
Target Name:	American Airlines -	Removed from Investigation
Target Name:	Arrow Cargo -	Removed from Investigation
Target Name:	Avianforum GMBH -	Removed from Investigation
Target Name:	Cielos Airline -	Removed from Investigation
Target Name:	South African Airways -	Removed from Investigation
Target Name:		Removed from Investigation
Target Name:	(b)(6), (b)(7)c	Removed from Investigation

DETAILS:

ALLEGATION – Beginning in May 2008, DOT-OIG participated in a large-scale investigation targeting domestic and international airlines engaging in collusion and price-fixing in their determination of passenger and air cargo fees. The United States Department of Justice, Antitrust Division (DOJ), Washington, D.C., and the Federal Bureau of Investigation (FBI), are the lead agencies in this investigation.

This large-scale antitrust investigation continues to be on-going. In June 2008, international airlines: Air France, Cathay Pacific Airways Limited, KLM Royal Dutch Airlines, Martinair and SAS Cargo Group each agreed to plead guilty to Sherman Antitrust Act violations and pay criminal fines totaling $504 million.

On April 9, 2009, Luxembourg-based Cargolux Airlines International S.A., Japan-based Nippon Cargo Airlines Co. Ltd (NCA), and Korea-based Asiana Airlines Inc. have each agreed to plead guilty and pay criminal fines totaling $214 million for conspiring to fix prices in the air cargo industry. In addition, Asiana was charged with fixing the passenger fares charged on flights from the United States to Korea.

According to the charges filed in United States District Court for the District of Columbia, each company engaged in a conspiracy, in the United States and elsewhere to eliminate competition. The companies attempted to eliminate competition by fixing the cargo rates charged to customers for international air shipments and/or passenger fares. The periods of the conspiracy range from as early as September 2001 through February 14, 2006. Cargolux has agreed to pay a $119 million fine; NCA has agreed to pay a $45 million fine, and Asiana has agreed to pay a

$50 million fine. In furtherance of the conspiracy, it is alleged that each airline participated in meetings, conversations and communications in the United States and elsewhere to discuss the cargo rates to be charged on certain routes to and from the United States.

JUDICIAL ACTION:

The U.S. Department of Justice, Antitrust Division, was responsible for the coordination of this investigation, including the joint efforts conducted by DOT/OIG, U.S. Postal Service, Office of Inspector General, and Federal Bureau of Investigation. The Disposition totals for this case are identified below:

Disposition Totals
Jail Terms: 1,780
Home Detention: 330
Halfway House: 0
Supervised Release: 1,275
Probation: 13,505
Community Correction: 0
Community Treatment: 0
Community Service: 0
Charity Service: 3
Fines: $1,943,334,214
Restitution: 0

CITATIONS:

Statute: Title 15 USC § 1 Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person

who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Antitrust Enforcement Enhancements and Cooperation Incentives

Pub. L. 108–237, title II, §§ 211–214,June 22, 2004, 118 Stat. 666, 667, as amended by Pub. L. 111–30, § 2,June 19, 2009, 123 Stat. 1775; Pub. L. 111–190, §§ 1–4,June 9, 2010, 124 Stat. 1275, 1276, provided that:
"SEC. 211. SUNSET.
"(a) In General.—Except as provided in subsection (b), the provisions of sections 211 through 214 of this subtitle [this note] shall cease to have effect 16 years after the date of enactment of this Act [June 22, 2004].
"(b) Exceptions.—With respect to—
"(1) a person who receives a marker on or before the date on which the provisions of section 211 through 214 of this subtitle shall cease to have effect that later results in the execution of an antitrust leniency agreement; or
"(2) an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect. "SEC. 212. DEFINITIONS.
"In this subtitle [subtitle A (§§ 211–215) of title II of Pub. L. 108–237, amending this section and sections 2 and 3 of this title and enacting this note]:
"(1) Antitrust division.—The term 'Antitrust Division' means the United States Department of Justice Antitrust Division.
"(2) Antitrust leniency agreement.—The term 'antitrust leniency agreement,' or 'agreement,' means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.
"(3) Antitrust leniency applicant.—The term 'antitrust leniency applicant,' or 'applicant,' means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

"(4) Claimant.—The term 'claimant' means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3] or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.
"(5) Cooperating individual.—The term 'cooperating individual' means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.
"(6) Marker.—The term 'marker' means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application.
"(7) Person.—The term 'person' has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12 (a)].

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I09G0000150300	DATE November 4, 2013
TITLE Holdren, Anti-Trust, Bid Rigging/Collusion Holdren, Diane Lynn Bogaty Interior Designer	PREPARED BY SPECIAL AGENT / INVESTIGATOR (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-3	11/4/13
		APPROVED BY KAJ

PREDICATION:

This investigation was initiated based upon a referral from the U.S. Attorney's Office for the Western District of Virginia regarding the City of Roanoke's Municipal Auditing Department audit of the Greater Roanoke Transit Company (GRTC), which found suspicious purchases associated with the renovation of the bus maintenance garage. The renovation project included the purchase of new furniture and decorative art type items for the building.

The Auditing Department became suspicious of the renovation bidding process because the person that was winning most of the bids was Diane Holdren, (b)(6), (b)(7)c (b)(6), (b)(7)c Diane Holdren is the owner/operator of Holdren's Interiors.

After learning that some of the bidding procedures were not being followed correctly, the Auditing Department began to look at all of the bids associated with the renovation. The audit found that some of the bids turned in by other vendors were fabricated proposals on fabricated invoices from other companies. It appears that the offenders prepared fake bid proposals in order to win contracts to renovate the Bus Maintenance Garage.

~~FOR OFFICIAL USE ONLY~~
(Public availability to be determined under 5 U.S.C. 552)

IG F 1600.2 (5-86)

REDACTED FOR DISCLOSURE

BACKGROUND:

The GRTC is a grantee of the Federal Transit Administration (FTA) which was established by the City of Roanoke in 1975 to provide transit in the Roanoke area. GRTC contracts with First Transit, Inc. for the management and operation of the transit system known as the Valley Metro. GRTC receives both capital and operating assistance from FTA on an annual basis.

DETAILS:

In 2006, Valley Metro decided to replace office furniture at its maintenance and administrative facility located at 1108 Campbell Avenue, SW, Roanoke, VA. To fund this project, Valley Metro applied to the FTA, for a grant. Subsequently, the FTA provided over $80,000 in grant money to Valley Metro for the project. In addition, FTA regularly provided both capital and operating grants to the GRTC budget. After receiving the FTA grant, officials at Valley Metro hired Diane Lynn Bogaty Holdren, a Roanoke area interior designer, to complete the project.

Ms. Holdren fabricated and submitted multiple bids of furniture vendors to Valley Metro in relation to the project. Ms. Holdren fabricated and inflated all of the vendor bids, thus guaranteeing that Valley Metro would have to pay more than the true costs associated with the project. After Valley Metro accepted the fabricated and inflated bids, Ms. Holdren submitted inflated invoices related to those bids that were then further inflated with nonexistent shipping costs. Valley Metro subsequently paid the furniture vendors directly based on the inflated bills it had received from Ms. Holdren. The vendor then issued Ms. Holdren a check for the difference. Ms. Holdren, also sold furniture and other items directly to Valley Metro at inflated prices, as she had with the vendor bids.

On January 17, 2012, Ms. Holdren, pleaded guilty in the United States District Court for the Western District of Virginia to charges. On April 30, 2012, Ms. Holdren was sentenced to four months of incarceration and four months of home confinement. In addition, she was ordered to pay a $3,000 fine and restitution in the amount of $45,728.

On June 1, 2012, Dave Morgan, former General Manager of Valley Metro Transit pleaded guilty in the United States District Court for the Western District of Virginia in Roanoke to charges that he stole government funds.

Mr. Morgan waived his right to be indicted and pleaded guilty to one count of theft of government funds. Between July 1, 2007, and June 20, 2008, Mr. Morgan stole money intended to support the daily operations of Valley Metro Transit. Specifically, he admitted that while working as the general manager for Valley Metro he utilized company credit cards to make inappropriate charges for $13,251 in meals, 45 percent of which was spent on alcohol at those meals, $860 in golfing fees, $171 for cigars and $170 in gift cards.

On June 25, 2013, Mr. Morgan in the United States District Court for the Western District of Virginia, United States District Chief Judge (b)(6), (b)(7)c sentenced David Morgan to 30 days of incarceration, 30 months of probation, and restitution in the amount of $10,416, plus a $100 assessment fee.

In conclusion, this investigation did substantiate the allegations. Based on the foregoing, I recommend that this case be closed.

ATTACHMENTS

No.:	Description
1.	Holdren Plea Agreement
2.	Morgan Plea Agreement
3.	Judgment in a Criminal Case – Case Number: DVAW 712CR000035-001
4.	Criminal Information (Holdren)
5.	Criminal Information (Morgan)

Memorandum

U.S. Department of Transportation

Office of the Secretary of Transportation

Office of Inspector General

Subject: **INFORMATION**: Closure of Investigation

Date: March 8, 2013

From: (b)(6), (b)(7)c
Special Agent-in-Charge, JRI-9

Reply to Attn. of: (b)(6), (b)(7)c

To: William Chadwick, Jr.
Director
Office of Airline Information
Research and Innovative Technology Administration
Bureau of Transportation Statistics

This is to advise you that the U.S. Department of Transportation, Office of Inspector General (OIG) office in Seattle, WA, has closed their investigation into an allegation that Frontier Flying Service (FFS), Fairbanks, AK, reported false passenger data to your agency. This investigation was initiated in response to a complaint made to the OIG Hotline Complaint Center. Although our investigation did confirm that (b)(6), (b)(7)c (b)(6), (b)(7)c caused inflated passenger numbers to be submitted to BTS, we did not find that the inflated reporting affected the amount of mail tendered by the U.S. Postal Service to (b)(6), (b)(7)c company or other carriers for delivery.

For additional details, please reference the attached Report of Investigation, which is furnished merely for your information; no action is necessary by your office. Please ensure that persons reviewing the report complete the record review form inside the report cover, and return the report when it has served your purposes.

Our investigation of this matter is hereby closed, with no further action anticipated. If you have any questions, or require additional information, please contact me.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION TITLE	INVESTIGATION NUMBER	DATE
Frontier Flying Service Fairbanks, AK	I10C000032CC	February 4, 2013
	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION USPS (1) BTS (1) JRI-9 (1)	1/6
VIOLATION(s): 18 USC 1001: False Statements		APPROVED HWS

SYNOPSIS:

This case was based on a complaint made to the OIG Hotline Complaint Center on March (b)(6), (b)(7)c 2010, in which (b)(6), (b)(7)c alleged (b)(6), (b)(7)c Frontier Flying Service (FFS), Fairbanks, AK, was reporting inflated passenger numbers to the DOT, Bureau of Transportation Statistics (BTS). (b)(6), (b)(7)c believed FFS was submitting the false numbers to BTS so the U.S. Postal Service (USPS) would give FFS more mail to deliver. [Per the Rural Service Improvement Act (RSIA), USPS uses the data reported to BTS to determine the amount of mail carriers will receive for delivery.] (b)(6), (b)(7)c stated BTS already investigated the matter and determined FFS submitted inflated passenger numbers to BTS for FFS' Unalakleet, AK to St. Michael, AK route. (b)(6), (b)(7)c claimed the inflated numbers resulted in USPS giving FFS a greater share of the mail for said route.

This joint investigation with USPS/OIG confirmed that (b)(6), (b)(7)c (b)(6), (b)(7)c submitted inflated passenger numbers to BTS for FFS' Unalakleet to St. Michael route. Specifically, (b)(6), (b)(7)c included passengers in the figures (b)(6), (b)(7)c reported to BTS who were not eligible to be counted per the RSIA. That said, USPS did not believe (b)(6), (b)(7)c suffered any consequences because of the inaccurate reporting. Consequently, OIG and USPS/OIG decided to close this case without further investigative activity.

This case is hereby closed with no further investigative activity anticipated.

IGF 1600.3 (3/82)

BACKGROUND

Congress passed the Rural Service Improvement Act (RSIA) in an effort to encourage air carriers to use larger aircraft for service between rural locations in Alaska, and to reduce the cost to the U.S. Postal Service (USPS) of delivering mail to such locations. RSIA provides for the carriers that fly the most passengers in certain markets to receive the most mail from USPS for delivery in those markets. Per the Act, carriers report their passenger totals for the various markets in T-100 reports submitted to the U.S. Department of Transportation, Bureau of Transportation Statistics, which compiles the data and forwards it to USPS. USPS then uses this data to determine how much mail carriers will receive for delivery in each market.

DETAILS:

On March (b)(6), (b)(7)c 2010, the OIG Hotline Complaint Center received a complaint from (b)(6), (b)(7)c (b)(6), (b)(7)c alleging Frontier Flying Service (FFS), Fairbanks, AK, was submitting false T-100 reports to the U.S. Department of Transportation, Bureau of Transportation Statistics (BTS) in order to receive a greater share of the mail tender from the U.S. Postal Service (USPS). (b)(6), (b)(7)c said BTS (b)(6), (b)(7)c already investigated the matter and concluded FFS' T-100 reports contained inflated passenger totals for FFS' Unalakleet, AK to St. Michael, AK route. (b)(6), (b)(7)c claimed this resulted in FFS receiving more of the mail tender for said route. (Attachment 1.)

On July 30, 2010, (b)(6), (b)(7)c was interviewed. (b)(6), (b)(7)c confirmed that (b)(6), (b)(7)c found FFS submitted inflated passenger numbers to BTS for FFS' Unalakleet to St. Michael route. During the month of records (b)(6), (b)(7)c examined, FFS reported two to three times the number of passengers that had actually flown this route. This was the result of FFS reporting passengers flying from Anchorage to St. Michael via Unalakleet, as flying from Unalakleet to St. Michael. Such reporting would only be permissible under RSIA if the FFS flight number had changed in Unalakleet, which it had not.

When (b)(6), (b)(7)c confronted (b)(6), (b)(7)c about the misreporting, (b)(6), (b)(7)c admitted directing one of (b)(6), (b)(7)c to include passengers who merely flew through Unalakleet en route to St. Michael in FFS' T-100 reports. (b)(6), (b)(7)c explained that (b)(6), (b)(7)c did so in order to "protect the market." (b)(6), (b)(7)c understood (b)(6), (b)(7)c to mean that (b)(6), (b)(7)c purposely caused the inflated passenger totals to be submitted to BTS in order to protect FFS' share of the mail tender for the Unalakleet-St. Michael market. (Attachment 2.)

A memorandum authored by and obtained from (b)(6), (b)(7)c in August 2010 was reviewed. The review disclosed that during a September 2009 visit to FFS, (b)(6), (b)(7)c determined that FFS had over-reported in the T-100 reports they submitted to BTS, their January 2009 passenger totals for the Unalakleet-St. Michael market. Whereas FFS had reported 77 passengers in their T-100 reports, (b)(6), (b)(7)c were only able to confirm 26.

Per (b)(6), (b)(7)c memo, when (b)(6), (b)(7)c confronted (b)(6), (b)(7)c about the discrepancy, (b)(6), (b)(7)c said (b)(6), (b)(7)c needed to report the Unalakleet-St. Michael market in the manner (b)(6), (b)(7)c did in order to receive first class mail from USPS (for delivery) and to 'protect the mail.' (b)(6), (b)(7)c acknowledged telling (b)(6), (b)(7)c to report passengers who boarded in

Anchorage and then flew to St. Michael *through* Unalakleet, as Unalakleet-St. Michael passengers. This manner of reporting is not consistent RSIA. Passengers who flew on one aircraft/flight number from Anchorage to St. Michael *via* Unalakleet, should not have been reported as Unalakleet-St. Michael passengers. (Attachment 3.)

On August 10, 2010, (b)(6), (b)(7)c and (b)(6), (b)(7)c were interviewed. Around 2006, (b)(6), (b)(7)c noticed the passenger totals reported to BTS by FFS begin to skyrocket. This caused (b)(6), (b)(7)c share of the passenger totals in some markets to decrease enough that it (negatively) impacted their share of the mail tender in those markets. One of the markets affected was the Unalakleet to St. Michael market. (b)(6), (b)(7)c claimed that during a September 2009 audit of FFS, (b)(6), (b)(7)c determined the number of passengers the company reported to BTS for their Unalakleet-St. Michael route was "way too much." (Attachment 4.)

On October 4, 2010, (b)(6), (b)(7)c was interviewed. (b)(6), (b)(7)c recently received a call from (b)(6), (b)(7)c during which (b)(6), (b)(7)c remarked that if he had simply changed the flight number (e.g., in Unalakleet), there would have been no problem with the way (b)(6), (b)(7)c reported FFS' passenger totals for the Unalakleet-St. Michael route. (b)(6), (b)(7)c acknowledged this was true, but noted that (b)(6), (b)(7)c had not changed the flight numbers. Therefore, the passenger totals (b)(6), (b)(7)c reported were to BTS were inaccurate.

Although (b)(6), (b)(7)c believed FFS' inflated passenger totals had resulted in a reduction to (b)(6), (b)(7)c share of the mail tender for the Unalakleet-St. Michael market, (b)(6), (b)(7)c did not have first-hand knowledge of this. Rather, (b)(6), (b)(7)c belief was based entirely on what (b)(6), (b)(7)c had been told by (b)(6), (b)(7)c (Attachment 5.)

On December 8, 2010, (b)(6), (b)(7)c was interviewed. (b)(6), (b)(7)c acknowledged that prior to meeting with (b)(6), (b)(7)c in September 2009, FFS had been submitting inflated passenger numbers to BTS for their Unalakleet-St. Michael flight. This was due to FFS incorrectly counting passengers flying from Anchorage to St. Michael *via* Unalakleet, as flying from Unalakleet to St. Michael. (b)(6), (b)(7)c claimed (b)(6), (b)(7)c was unaware prior to the September 2009 meeting that such reporting was only permissible if the flight number changed (in Unalakleet).

(b)(6), (b)(7)c has since changed the way (b)(6), (b)(7)c flies passengers from Anchorage to St. Michael. Passengers now fly from Anchorage to Unalakleet on an FFS plane and then from Unalakleet to St. Michael on an (b)(6), (b)(7)c Hageland aircraft.

Because each flight has a unique flight number, (b)(6), (b)(7)c can now claim passengers flying from Anchorage to St. Michael via Unalakleet as Unalakleet-St Michael passengers in their T-100 reports. (Attachment 6.)

On December 8, 2010, (b)(6), (b)(7)c was interviewed. (b)(6), (b)(7)c was aware that (b)(6), (b)(7)c claimed FFS' misreporting negatively impacted Bering's share of the mail tender; however, (b)(6), (b)(7)c had no knowledge of this actually occurring. (Attachment 7.)

On June 8, 2011, (b)(6), (b)(7)c was interviewed. (b)(6), (b)(7)c declined to provide documentation demonstrating that (b)(6), (b)(7)c was impacted by FFS' false reporting. (Attachment 8.)

In July 2011, OIG received an email authored by (b)(6), (b)(7)c wherein (b)(6), (b)(7)c suggested that (b)(6), (b)(7)c was most likely correct if (b)(6), (b)(7)c previously stated that (b)(6), (b)(7)c share of the mail tender had not been reduced by USPS.

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INDEX OF ATTACHMENTS

Number	Description
1.	Review of March 2010 Complaint
2.	Interview of (b)(6), (b)(7)c July 30, 2010
3.	Review of Memorandum, August 2012
4.	Interview of (b)(6), (b)(7)c August 10, 2010
5.	Interview of (b)(6), (b)(7)c October 4, 2010
6.	Interview of (b)(6), (b)(7)c December 8, 2010
7.	Interview of (b)(6), (b)(7)c December 8, 2010
8.	Interview of (b)(6), (b)(7)c June 8, 2011.
9.	Receipt of E-mail, July 2011

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I10G0000620200	NOV 05 2013
TITLE	PREPARED BY SPECIAL AGENT	STATUS
Jefferson County Bridges Jefferson County, NY	(b)(6), (b)(7)c	Final
	DISTRIBUTION	csf 1/3
Bid Rigging	JRI-2 (1)	DS

DETAILS

This investigation is predicated upon a December 16, 2009 referral from the New York State Office of the State Inspector General (NYSIG). NYSIG advised that on October 14, 2009, an anonymous caller alleged that two bridge painting companies, PCI International, Inc. (PCI), 26 Cooper Avenue, Tonawanda, NY and Erie Painting and Maintenance, Inc. (EPM), 999 Rein Road Cheektowaga, NY engaged in a scheme to defraud the New York State Department of Transportation (NYSDOT) on an American Recovery and Reinvestment Act-funded NYSDOT Contract (#D261128) (hereinafter "the Project") to clean and repaint 8 bridges in Jefferson County, New York. The ensuing investigation, conducted jointly by the OIG, US DOL/OIG, FBI, and NYSIG, did not corroborate the allegation, thus resulting in a prosecutorial declination by (b)(6), (b)(7)c NDNY. Details to follow.

The anonymous complainant alleged that PCI submitted the low bid of $1.9 million on the Project. After being identified as the low bidder on May 7, 2009, PCI advised NYSDOT it had mistakenly underbid the Project and could not complete it for that price. In response, NYSDOT awarded the bid to the next lowest bidder, EPM, for its bid amount of $2.7 million. The complainant alleged this was the result of a scheme devised by respective PCI and EPM (b)(6), (b)(7)c to increase the contract amount and to split the difference of approximately $900,000 between them.

The investigation confirmed that after bidding, PCI advised NYSDOT that it mistakenly underbid the Project and had dropped its bid and that NYSDOT subsequently awarded the project to EPM for $2.7 million. However, the allegation of bid manipulation was not supported by the investigative findings.

A (b)(6), (b)(7)c of (b)(6), (b)(7)c Ohio-based All Seasons Contracting (ASC), was interviewed on three occasions by the case agent. A number of inconsistencies emerged from these interviews. (b)(6), (b)(7)c initially claimed (b)(6), (b)(7)c asked (b)(6), (b)(7)c to participate in a bid-rigging scheme with

PCI prior to the bid submission. (Attachment 1) (b)(6), (b)(7)c later claimed (b)(6), (b)(7)c discussed the scheme with (b)(6), (b)(7)c after PCI dropped the bid, but before it was awarded to EPM, and that it was to involve using ASC to complete some of the bridges on the Project while PCI completed others. (b)(6), (b)(7)c advised (b)(6), (b)(7)c declined (b)(6), (b)(7)c offer. (Attachments 2 and 3).

EPM's certified payroll submittals to NYSDOT were reviewed. A total of 27 employees were identified as having worked for EPM on the Project. Of the 27, 13 were PCI employees prior to the Project and twelve of those returned to PCI's payrolls upon Project completion. Only four had ever worked for EPM prior to the Project. Further, EPM identified (b)(6), (b)(7)c (b)(6), (b)(7)c in its payroll submittals to NYSDOT. (Attachment 4)

Individuals indentified in the certified payrolls were interviewed, several advising that (b)(6), (b)(7)c or PCI supervised the project and that PCI equipment was used in performing the work. (Attachments 5-8)

Bank records were reviewed and documented that EPM made payments to PCI of over $500,000 during the period work on the Project was being completed. EPM's controller was asked about these payments and claimed EPM paid PCI for equipment it rented to execute the work on the Project. (Attachment 9)

On February 23, 2012, OIG agents, along with agents from US DOL/OIG and the FBI, executed search warrants on both EPM and PCI. (Attachments 10-12)

Documents and electronic records were seized and subsequently reviewed. The reviews were unable to substantiate the existence of a fraudulent scheme between (b)(6), (b)(7)c to defraud NYSDOT.

On May 29, 2013, AUSA (b)(6), (b)(7)c declined prosecution on both EPM and PCI. (Attachment 13)

This case is closed.

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Index of Attachments

No.	Description
1.	Interview of (b)(6), (b)(7)c conducted on May (b)(6), (b)(7)c 2011.
2.	Interview of (b)(6), (b)(7)c conducted on September (b)(6), (b)(7)c 2011
3.	Interview of (b)(6), (b)(7)c conducted on December (b)(6), (b)(7)c 2011
4.	Review of New York State Wage Reports and Certified Payroll Reports submitted by EPM on the Project, conducted on September 29, 2011.
5.	Interview of (b)(6), (b)(7)c conducted on December (b)(6), (b)(7)c 2011.
6.	Interview of (b)(6), (b)(7)c conducted on December (b)(6), (b)(7)c 2011.
7.	Interview of (b)(6), (b)(7)c conducted on December (b)(6), (b)(7)c 2011.
8.	Interview of (b)(6), (b)(7)c conducted on December (b)(6) 2011.
9.	Interview of (b)(6), (b)(7)c conducted on October (b)(6), (b)(7)c 2011.
10.	Affidavit for search warrants on EPM and PCI, dated February 21, 2012.
11.	Search Warrant for EPM, dated February 21, 2012.
12.	Search Warrant for PCI, dated February 21, 2012.
13.	Email from AUSA (b)(6), (b)(7)c declining prosecution, dated May 29, 2013.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I10P0000520300	6/28/2013
TITLE (b)(6), (b)(7)c - Public Corruption (b)(6), (b)(7)c	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS FINAL
	DISTRIBUTION JRI-3	APPROVED BY

PREDICATION:

On August 27, 2010, (b)(6), (b)(7)c Office of Special Investigations, JI-3 contacted JRI-3 and advised that (b)(6), (b)(7)c had been contacted by (b)(6), (b)(7)c who reported an attempted bribe of a MARAD official. (b)(6), (b)(7)c attempted to bribe (b)(6), (b)(7)c Maritime Administration (MARAD), (b)(6), (b)(7)c . Money was offered in exchange for MARAD employees to support (b)(6), (b)(7)c contract proposal and influence the decision of other government officials to either support or contract with (b)(6), (b)(7)c The proposal was to provide security guards on private boats off the eastern coast of Africa to prevent and deter piracy.

SUMMARY:

OIG's investigation revealed that (b)(6), (b)(7)c submitted a proposal to a MARAD official, under the business name (b)(6), (b)(7)c for a lucrative contract providing maritime security services to combat Somali pirates attacking private merchant vessels off the African Coast. Throughout the proposal, (b)(6), (b)(7)c included numerous false representations concerning (b)(6), (b)(7)c capacity to carry-out the proposal's mission. For example, (b)(6), (b)(7)c indicated that (b)(6), (b)(7)c company could provide a private army of 3,000 men; however, (b)(6) company did not have any employees, executive officers, or personnel.

DETAILS:

(b)(6), (b)(7)c was introduced to (b)(6), (b)(7)c in July 2010 regarding (b)(6), (b)(7)c (b)(6), (b)(7)c The unsolicited proposal document outlined a business enterprise involving hundreds of millions of dollars for anti-piracy security services for more than 100 ships at a time. (b)(6), (b)(7)c reviewed the proposal at the Office of Acquisition's behest, and later advised (b)(6), (b)(7)c that MARAD was not interested in (b)(6), (b)(7)c proposal.

On August 24th, 2010, at the Starbucks coffee shop adjacent to the Department of Transportation (DOT) headquarters building, (b)(6), (b)(7)c agreed to meet with (b)(6), (b)(7)c to conclude the matter. After a few minutes of conversation, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c stood to make $50 million through the arrangement and asked (b)(6), (b)(7)c in very close paraphrase, "would you be interested in a cut?" and "would you like to know how much that could be?".

(b)(6), (b)(7)c promptly contacted MARAD's legal office in response to the bribe. At that time, DOT OIG became involved and arranged subsequent meetings between (b)(6), (b)(7)c and (b)(6), (b)(7)c At those meetings, (b)(6), (b)(7)c promised to give two public officials, (b)(6), (b)(7)c and (b)(6), (b)(7)c a large amount of money in exchange for the support and funding of (b)(6), (b)(7)c proposal.

(b)(6), (b)(7)c offered (b)(6), (b)(7)c a job as a ship captain that would pay $300,000 for six months. Or, if (b)(6), (b)(7)c was not interested in a job, $1 Million per year for 10 years, for a total of $10 Million in exchange for a contract with MARAD. (b)(6), (b)(7)c also offered (b)(6), (b)(7)c $500,000 as a good-faith payment in exchange for MARAD supplying (b)(6), (b)(7)c with up-front development funding.

Not only did (b)(6), (b)(7)c offer (b)(6), (b)(7)c a bribe but (b)(6), (b)(7)c told (b)(6), (b)(7)c that (b)(6), (b)(7)c would like to offer (b)(6), (b)(7)c (b)(6), (b)(7)c a similar bribe. (b)(6), (b)(7)c stated that (b)(6), (b)(7)c needed to influence (b)(6), (b)(7)c and that people don't do anything unless there is some type of personal gain; therefore, (b)(6), (b)(7)c would offer (b)(6), (b)(7)c an exit strategy for retirement. To check the veracity of this statement (b)(6), (b)(7)c , also (b)(6), (b)(7)c was asked to meet with, (b)(6), (b)(7)c offered (b)(6), (b)(7)c a job on a board of directors that would pay $300,000 a year for attending a directors' meeting once a month for the duration of (b)(6), (b)(7)c employment, in exchange for (b)(6), (b)(7)c support of (b)(6), (b)(7)c proposal.

(b)(6), (b)(7)c was aware that what (b)(6), (b)(7)c was offering was illegal, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c would place the bribe money in an off-shore or Swiss bank account so that the money couldn't be traced back to their names and the IRS couldn't track the money. (b)(6), (b)(7)c acknowledged that (b)(6), (b)(7)c could go to jail and lose (b)(6), (b)(7)c job.

ALLEGATION – (b)(6), (b)(7)c violated 18 U.S.C. 201 when (b)(6), (b)(7)c offered money and employment to MARAD officials in exchange for a contract award for (b)(6), (b)(7)c also violated 18 U.S.C. 1001 when (b)(6), (b)(7)c knowingly and willfully made a materially false, fictitious, or fraudulent statement when he submitted a false proposal to MARAD.

Memorandum of Activity (MOA) of SA (b)(6), (b)(7)c August 30, 2010, interview of (b)(7)c MARAD, (b)(6), (b)(7)c
Interview of (b)(6), (b)(7)c about (b)(6), (b)(7)c first meetings with (b)(6), (b)(7)c

MOA of SA (b)(6), (b)(7)c August 30, 2010, Document Review (b)(6) Proposal part 1 and part 2.
(b)(6), (b)(7)c submitted an unsolicited proposal to MARAD for security against pirates off the coast of Somalia.

MOA of SA (b)(6), (b)(7)c October 4, 2010, Consensual Recording.
During the consensual phone call, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c would like (b)(6), (b)(7)c to support the (b)(6) proposal. However, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c did not feel comfortable talking about what (b)(6), (b)(7)c would be offered on the phone and asked to meet in person.

MOA of SA (b)(6), (b)(7)c October 13, 2010, Consensual Recording.
On October 13, 2010 (b)(6), (b)(7)c met with (b)(6), (b)(7)c at the Department of Transportation (DOT) headquarters building. (b)(6) offered two different forms of compensation in exchange for (b)(6), (b)(7)c getting (b)(6), (b)(7)c proposal endorsed by MARAD: a paid position as a ship captain or $1 Million per year in a Swiss bank account for the life of the contract. (b)(6), (b)(7)c also offered to draft a contract which will state how much money (b)(6), (b)(7)c would pay (b)(6), (b)(7)c

MOA of SA (b)(6), (b)(7)c October 20, 2010, Document Review of Military Service.

(b)(6), (b)(7)c

(b)(6), (b)(7)c

MOA of SA (b)(6), (b)(7)c November 2, 2010, meeting with (b)(6), (b)(7)d
(b)(6), (b)(7)c
Memorandum of a meeting with (b)(6), (b)(7)c explained that it is in the scope of (b)(6), (b)(7)c duties to suggest piracy solutions to (b)(6), (b)(7)c superiors and to other members of the anti-piracy community. (b)(6), (b)(7)c could recommend a solution and name (b)(6), (b)(7)c as a supplier of that solution. MARAD Counsel explained that MARAD has the authority to grant Cooperative Agreements; where MARAD contracts with a private contractor to solve a solution to a particular problem, like piracy.

MOA of (b)(6), (b)(7)c November 15, 2010, Consensual Recording.
During the phone call, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c has discussed (b)(6), (b)(7)c proposal with people in the piracy community and there was interest. However, because (b)(6), (b)(7)c was sticking his neck out, (b)(6), (b)(7)c wanted to know what (b)(6), (b)(7)c could do for (b)(6), (b)(7)c now. (b)(6), (b)(7)c stated that (b)(6), (b)(7)c could do something for (b)(6), (b)(7)c but (b)(6), (b)(7)c wanted to meet with (b)(6), (b)(7)c in person.

MOA of (b)(6), (b)(7)c November 19, 2010, Consensual Recording.
During the meeting, (b)(6), (b)(7)c told (b)(6), (b)(7)c that when (b)(6), (b)(7)c felt uncomfortable about (b)(6), (b)(7)c discussing (b)(6), (b)(7)c cut of $50M because that was illegal, (b)(6), (b)(7)c could lose (b)(6), (b)(7)c job and go to jail. (b)(6), (b)(7)c also explained (b)(6), (b)(7)c position at MARAD and how (b)(6), (b)(7)c was in a position to move the proposal forward because MARAD co-chairs various piracy working groups.

(b)(6), (b)(7)c said that (b)(6), (b)(7)c could put the money in a Swiss Bank Account in about 6 months, but the money would be on hold until (b)(6), (b)(7)c left MARAD. Every year that the contract is in place, (b)(6), (b)(7)c would put $1M in (b)(6), (b)(7)c account, totaling $10M for 10 years.

(b)(6), (b)(7)c asked what (b)(6), (b)(7)c would need to feel comfortable. (b)(6), (b)(7)c suggested that they could put something in writing, like a guarantee contract, where (b)(6), (b)(7)c would have a 3rd party notary sign off on it.

(b)(6), (b)(7)c said that (b)(6), (b)(7)c could do something sooner, in advance of the contract, and before (b)(6), (b)(7)c left the government. They would have to go through a third party. The third party could be someone in E. Africa, because that way the IRS couldn't track or take taxes out of the money. The amount would be $500K, which would be a good faith deposit until the actual contract was won. Before that could happen, (b)(6), (b)(7)c would need to get money from MARAD for startup/development costs. That money would be used to lobby Senators and could be used to "lobby" (b)(6), (b)(7)c

(b)(6), (b)(7)c stated that (b)(6), (b)(7)c needed to get (b)(6), (b)(7)c on board. (b)(6), (b)(7)c said that (b)(6), (b)(7)c knows that people don't do anything unless there is some type of personal gain, so if (b)(6), (b)(7)c is retiring, (b)(6), (b)(7)c could help (b)(6), (b)(7)c come up with that exit strategy. Another item that (b)(6), (b)(7)c wanted from MARAD was a letter endorsing (b)(6), (b)(7)c proposal; the letter would give (b)(6), (b)(7)c proposal legitimacy.

(b)(6), (b)(7)c stated that (b)(6), (b)(7)c wanted to keep in contact with (b)(6), (b)(7)c through a secure line because (b)(6), (b)(7)c didn't want to talk on (b)(6), (b)(7)c cell phone and say anything incriminating. (b)(6), (b)(7)c stated that (b)(6), (b)(7)c could call (b)(6), (b)(7)c through a Skype account and use code names. (b)(6), (b)(7)c code name was (b)(6)

MOA of SA (b)(6), (b)(7)c , November 22, 2010, Consensual Recording.
During the monitored phone call, (b)(6), (b)(7)c stated that (b)(6), (b)(7)c had a great idea for (b)(6), (b)(7)c that when (b)(6), (b)(7)c retired from Government (b)(6) should open his own piracy consulting company. (b)(6) proposal could be his first project to bring to MARAD.

Transcript of Consensual Recording, January 8, 2011.
During the monitored phone call, (b)(6), (b)(7)c told (b)(6), (b)(7)c that (b)(6) was interested in speaking with (b)(6), (b)(7)c about the proposal. (b)(6), (b)(7)c explained that (b)(6), (b)(7)c (b)(6), (b)(7)c

MOA of SA (b)(6), (b)(7)c January 18, 2011, Consensual Recording.
During the monitored phone call, (b)(6), (b)(7)c called (b)(6), (b)(7)c on his work telephone. They briefly discussed what a (b)(6), (b)(7)c was and the best way to deter piracy. (b)(6), (b)(7)c requested an in-person meeting.

MOA of SA (b)(6), (b)(7)c January 21, 2011, Consensual Recording.
During the recorded meeting, (b)(6), (b)(7)c mentioned that (b)(6), (b)(7)c had fully briefed (b)(6), (b)(7)c about the proposal and (b)(6), (b)(7)c previous meetings with (b)(6), (b)(7)c also stated that (b)(6), (b)(7)c was due to retire in the near future. (b)(6), (b)(7)c said that there could be an exit strategy for (b)(6), (b)(7)c (b)(6), (b)(7)c said that (b)(6), (b)(7)c knows people will only do something if they have something in it for themselves.

MOA of SA (b)(6), (b)(7)c February 4, 2011, Consensual Recording.
During the recorded meeting, (b)(6), (b)(7)c stated that (b)(6) could offer (b)(6), (b)(7)c a director position in his company when (b)(6), (b)(7)c retired. The director position would take minimal time and would pay $300,000 per year. (b)(6), (b)(7)c said that it was illegal and unethical for (b)(6), (b)(7)c to take the director position. (b)(6), (b)(7)c said that outside the government, people did not view taking a director position after retiring from government service as illegal because everyone did it.

MOA of SA (b)(6), (b)(7)c February 7, 2011, attempted interview of (b)(6), (b)(7)c letter from AUSA (b)(6), (b)(7)c to (b)(6), (b)(7)c February 1, 2011.
The memorandum documents the reporting agent's attempt to interview (b)(6), (b)(7)c Attached is the subject letter that was sent via certified mail and email to (b)(6), (b)(7)c instructing (b)(6), (b)(7)c to meet with the Assistant U.S. Attorney on March 4, 2011.

MOA of SA (b)(6), (b)(7)c February 16, 2011, interview of (b)(6), (b)(7)c
Interview of (b)(6) about (b)(6), (b)(7)c experience with (b)(6)

MOA of SA (b)(6), (b)(7)c **March 2, 2011, Document Review of Transcripts.**
The reporting agent reviewed the transcripts from (b)(6), (b)(7)c consensually monitored meetings with MARAD officials and drafted a summary document for the AUSA, which is attached.

MOA of SA (b)(6), (b)(7)c **June 27, 2012, interview of** (b)(6), (b)(7)c (b)(6), (b)(7)c
Interview of (b)(6), (b)(7)c about (b)(6), (b)(7)c experience with (b)(6), (b)(7)c and (b)(6), (b)(7)c company's ability to provide MARAD with the services outlined in (b)(6), (b)(7)c proposal.

JUDICIAL REFERRAL

On February 15, 2013, in U.S. District Court, Washington, DC, Assistant U.S. Attorney (AUSA) (b)(6), (b)(7)c charged Luis Rodriguez with false statements in conjunction with a contract proposal he submitted to the U.S. Department of Transportation, Maritime Administration (MARAD). On March 27, 2013, Rodriguez pleaded guilty to false statements. On June 11, 2013 , Rodriguez was sentenced to 36 months of supervised probation, a $100 special assessment, and 200 hours of community service.

CITATIONS

18 U.S.C. § 1001 False Statements. Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the U.S., knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or (2) makes any materially false, fictitious, or fraudulent statement or representation.

INDEX OF ATTACHMENTS

No.:	Description
1.	Memorandum of Activity (MOA) of SA (b)(6), (b)(7)c August 30, 2010, interview of (b)(6), (b)(7)c Maritime Administration (MARAD), (b)(6), (b)(7)c (b)(6), (b)(7)c
2.	MOA of SA (b)(6), (b)(7)c August 30, 2010, Document Review of Proposal. Attached: (b)(6), (b)(7)c
3.	MOA of SA (b)(6), (b)(7)c October 4, 2010, Consensual Recording. Attached: Transcript.
4.	MOA of SA (b)(6), (b)(7)c October 13, 2010, Consensual Recording. Attached: Transcript.
5.	MOA of SA (b)(6), (b)(7)c October 20, 2010, Document Review of Military Service.
6.	MOA of SA (b)(6), (b)(7)c November 2, 2010, meeting with (b)(6), (b)(7)c (b)(6), (b)(7)c
7.	MOA of SA (b)(6), (b)(7)c November 15, 2010, Consensual Recording. Attached: Transcript.
8.	MOA of SA (b)(6), (b)(7)c November 19, 2010, Consensual Recording. Attached: Transcript.
9.	MOA of SA (b)(6), (b)(7)c November 22, 2010, Consensual Recording. Attached: Transcript.
10.	Transcript of Consensual Recording, January 8, 2011.
11.	MOA of SA (b)(6), (b)(7)c January 18, 2011, Consensual Recording. Attached: Transcript.

12. MOA of SA (b)(6), (b)(7)c January 21, 2011, Consensual Recording. Attached: Transcript.

13. MOA of SA (b)(6), (b)(7)c February 4, 2011, Consensual Recording. Attached: Transcript.

14. MOA of SA (b)(6), (b)(7)c February 7, 2011, attempted interview of (b)(6), (b)(7)c Attached: Subject letter from AUSA (b)(6), (b)(7)c to (b)(6), (b)(7)c email from (b)(6), (b)(7)c

15. MOA of SA (b)(6), (b)(7)c February 16, 2011, interview of (b)(6), (b)(7)c (b)(6), (b)(7)c

16. MOA of SA (b)(6), (b)(7)c March 2, 2011, Document Review of Transcripts. Attached: Summary of Transcripts.

17. MOA of SA (b)(6), (b)(7)c June 27, 2012, interview of (b)(6), (b)(7)c (b)(6), (b)(7)c

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I10Q000005CC	01/28/2013
TITLE U.S. Ex Rel. (b)(6), (b)(7)c The Gallup Organization, Washington, DC, Case No. 1:09-CV-1985 (D.D.C.) Qui Tam	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS FINAL
	DISTRIBUTION JRI-3	APPROVED BY KAJ

PREDICATION:

This investigation was predicated upon receipt of a complaint from U.S. Department of Justice, Civil Division, that a private citizen reported that The Gallup Organization of Washington, DC, violated the False Claims Act by submitting inflated estimates of the hours required to complete various tasks in polling contracts with the Federal Aviation Administration (FAA) and the National Highway Traffic Safety Administration (NHTSA). Specifically, on November 24, 2009, the U.S. Department of Transportation, Office of Inspector General (OIG) Complaint Analysis Center received a copy of Qui Tam [U.S. ex rel. (b)(6), (b)(7)c v. The Gallup Organization of Washington, DC, Case No. 1:09-cv-1985 (D.D.C.) Filed Under Seal] from (b)(6), (b)(7)c (b)(6), (b)(7)c U.S. Department of Justice, Washington, DC, reporting that the Gallup Organization violated the False Claims Act when submitting false cost and pricing data on both FAA and NHTSA polling contracts. This also constitutes a violation of the Truth in Negotiations Act, 10 USC §2306a. Complainant alleged that Gallup violated the False Claims Act by submitting false or fraudulent inflated estimates of the hours required to complete various tasks in connection with a NHTSA polling contract valued at $2 million per year. Gallup also engaged in fraudulent, back-in, pricing on an FAA polling contract valued at $8.5 million. Complainant alleged that Gallup, the company that promotes itself as "the most trusted name in polling" - and its management have been defrauding the U.S. government in a variety of ways, including knowingly providing false information to the government during negotiations for fixed-price contracts, knowingly mischarging the government by billing labor to a cost-based contract when the labor was actually performed to meet requirements on other fixed-price contracts, and obtaining contracts through improper influence.

SUMMARY:

In brief, our investigation did not substantiate The Gallup Organization (Gallup) of Washington, DC, violated the False Claims Act by submitting inflated estimates of the hours required to complete various tasks in polling contracts with the Federal Aviation Administration(FAA) and National Highway Traffic Safety Administration (NHTSA). The lawsuit filed against The Gallup Organization was filed by (b)(6), (b)(7)b who alleged that Gallup violated the False Claims Act by making false claims for payment under contracts with federal agencies to provide polling services for various government programs. According to (b)(6), (b)(7)c complaint, Gallup violated the False Claims Act by giving the Government inflated estimates of the number of hours that it would take to perform its services, even though it had separate and lower internal estimates of the number of hours that would be required. The complaint further alleged that the Government paid Gallup based on the inflated estimates, rather than Gallup's lower internal estimates. (b)(6), (b)(7)cprovided working documents with cost adjustments for some Government contracts, but he was not able to provide specific working documents for FAA and NHTSA contracts that showed the cost adjustments. The U.S. Department of Justice filed a United States Complaint in Intervention alleging a civil action by the United States of America against defendant The Gallup Organization.

IDENTIFICATION:

Business Name: The Gallup Organization

Business/Home Address: 901 F St NW # 400, Washington, DC 20004

DETAILS:

Interview of (b)(6), (b)(7)c **(Attachment 1)**

On May 6, 2010, (b)(6), (b)(7)c was interviewed at the U.S. Attorney's Office for the District of Columbia. (b)(6), (b)(7)creported Gallup's billing strategy, under the SLR (Standard Labor Rate) structure. Gallup would bill Government agencies for services on contracts with a billing increase billing of 15-18%. Specifically, Gallup would increase the rates of the hourly rates of positions. When bidding on the contract Gallup would use the proper SLR structure but lower the hourly rates in order to get the contract, then Gallup would inflate the hours. (b)(6), (b)(7)creported that

the labor qualifications were on Government contracts were incorrect. The named individuals on the proposals would have the proper qualifications; i.e., the Project Director, but there was a disconnect between what was required and what was provided. Gallup would bulk up the experience requirements to meet the labor rate. Employees were not trained nor paid at the bulked up rate. Gallup would invent labor categories at the preliminary stages of the contract. When calculating the number of hours they should have been looking at historical data by reviewing completed projects, etc.

(b)(6), (b)(7)c reported that Gallup used a process to bypass the system. Gallup would draft a budget to submit by the project director which would have a couple of revisions made, then it would make the rounds of Gallup management again and once approved, the partners would sign it. Some triggers that would elevate the budget draft to the CFO or executive committee would be: dollar amount, legal issues, or if it was a multi-year contract. Then it would be submitted to the agency. Some partners at Gallup followed standard practices and had very accurate budgets, but it was not required because Gallup had no formal set standards or formal processes. Increased Government scrutiny caused Gallup to begin to reevaluate its practices. A GSA audit turned out very badly and forced GSA to have consultants oversee Gallup.

(b)(6), (b)(7)c stated that Gallup assigned (b)(6), (b)(7)c to the FAA contracts. (b)(6), (b)(7)c worked with (b)(6), (b)(7)c daily and noticed that (b)(6), (b)(7)c employed the scheme of organizing performance surveys in the contracts with FAA. (b)(6), (b)(7)c said that Gallup used the "back in" budgeting techniques of taking the total on the contract and backing in category hours to fill up the final total on the contract. The ceiling on the contract was 2 million a year for 5 years, then the ceiling would be raised. The ceiling was raised every year on this contract. The claims that were submitted to the Government were paid without question. Gallup was never required to break out the invoices. The FAA contract with, (b)(6), (b)(7)c , as a sub contractor was a Human Resource organization performance contract with the RFP set at 9.5 million dollars. Gallup slashed the sub contractors' budgets and inflated the labor hours to make up the cash and billed in left over tasks and categories that were not used.

(b)(6), (b)(7)c reported that there are only three or four other companies out in the marketplace today that do what Gallup does. Other competitors did come in below them on bids. Gallup came in last on costs when asked about it in customer surveys; Gallup was consistently well above competition, by about 400%.

Interview of (b)(6), (b)(7)c **(Attachment 3)**

On April 10, 2012, (b)(6), (b)(7)c was interviewed at the U.S. Department of Justice regarding the Gallup investigation. (b)(6), (b)(7)c reported that (b)(6), (b)(7)c of Gallup, inflated the proposals that were submitted to Government agencies to include, the U.S. Department of Transportation. (b)(6), (b)(7)c who was responsible for running the numbers for the contracts, created the budget, then adjusted the numbers as (b)(6), (b)(7)c saw fit. (b)(6), (b)(7)c strongest points were calculating numbers; (b)(6), (b)(7)c inflated the numbers to a point where they were "passable." After the final budget was submitted to the Government for payment, (b)(5), (b)(7)c would locate the budget in the X-drive, print it out, and reduce the hours to what they should have been. Then (b)(6), (b)(7)c would give the documents to (b)(6), (b)(7)c to use to create the initial budget. This would explain why (b)(6), (b)(7)c had some documents from Government contracts with figures that were less than what was actually submitted to Gallup for payment. The documents that (b)(6), (b)(7)c had in possession were turned over to the Government. (b)(6), (b)(7)c did not have documents with altered figures for DOT.

JUDICIAL ACTION:

On November 27, 2012, the U.S. Department of Justice filed a United States Complaint in Intervention alleging a civil action by the United States of America against defendant The Gallup Organization to recover treble damages and civil penalties under the False Claims Act. The Plaintiff in this action is the United States of America, specifically the United States Department of the Treasury, United States Department of State, and United States Department of Homeland Security.

CITATIONS:

Statute: Title 31 USC § 3729 False Claims

(a) Liability for Certain Acts.—
(1) In general.— Subject to paragraph (2), any person who—
(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,
is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410 [1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

INDEX OF ATTACHMENTS

No.:	Description		
1.	Interview of	(b)(6), (b)(7)c	May 6, 2012 (Attachment 1)
2.	Interview of		April 10, 2012 (Attachment 2)

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	**INVESTIGATION NUMBER** I11E002CCU	**DATE** July 25, 2012
TITLE (b)(6), (b)(7)c National Highway Traffic Safety Administration 1200 New Jersey Ave., SE, Washington, DC 20591	**PREPARED BY SPECIAL AGENT / INVESTIGATOR** SA (b)(6), (b)(7)c	**STATUS** Final
	DISTRIBUTION JI-2 NHTSA	(b)(6), (b)(7)c 1/8 **APPROVED BY** WLS

SUMMARY:

This investigation was based on a project to identify U.S. Department of Transportation (DOT) employees and contractor employees who may be using DOT computers and network resources to access and download child pornography (CP) from the Internet. The Office of Inspector General (OIG) reviewed DOT Internet logs and identified an IP address assigned to (b)(6), (b)(7)c National Highway Traffic Safety Administration (NHTSA), DOT Headquarters, 1200 New Jersey Ave., SE, Washington, DC 20591, that was accessing the Internet and searching for terms indicative of CP.

DOT-OIG's examination of (b)(6), (b)(7)c DOT-issued laptop computer identified pornographic images, to include obscene visual representations of sexual abuse of children (specifically, images of a cartoon nature) and numerous Internet searches indicative of an individual looking for pornographic material, specifically material depicting minors.

DOT-OIG monitored (b)(6), (b)(7)c DOT workstation for over a month recording (b)(6), (b)(7)c online activities and capturing screen shots of (b)(6), (b)(7)c desktop display at the time keywords were typed into the web browser. The screen shots included searches for "hentai loli," "dancing girls," "lesbian loli," "hentai my little pony," "hentai beautiful twins," and "hentai blood."

During an interview with DOT-OIG agents, (b)(6), (b)(7)c admitted to searching for and viewing cartoon images that (b)(6), (b)(7)c described as "inappropriate" while at work and on his DOT-issued computer. (b)(6), (b)(7)c provided a written statement detailing (b)(6), (b)(7)c Internet activities at work.

The DOT-OIG conducted a sample time analysis for the month of December 2010 and concluded (b)(6), (b)(7)c spent approximately 22 hours (avg. 37 min/day) actively searching out online content. By multiplying the value of approximately 22 hours/month by 12 months, the figure for time spent by (b)(6), (b)(7)c per year actively searching online content is approximately 264 hours/year (11 days).

The DOT-OIG coordinated with a Department of Justice (DOJ) Trial Attorney with the District of Columbia, who declined the case for prosecution as there were no chargeable CP images.

IDENTIFICATION:

The following is identifying information regarding the subject of investigation:

Name: (b)(6), (b)(7)c

Home Address: (b)(6), (b)(7)c

Grade: (b)(6), (b)(7)c

Date of Birth: (b)(6), (b)(7)c

SSN: (b)(6), (b)(7)c

Current Title/Post of Duty: (b)(6), (b)(7)c
National Highway Traffic Safety Administration,
Department of Transportation Headquarters
1200 New Jersey Ave, SE
Washington, DC 20591

Criminal History: None

BACKGROUND:

In late January 2011, DOT-OIG initiated an investigation to identify DOT employees and contractors who may be using DOT computers and network resources to access and/or download CP from the Internet. DOT-OIG obtained a copy of Bluecoat[1] logs covering the previous 12 months, and analysis of the logs identified an IP address at DOT headquarters as having a large number of "hits" (in the thousands) for Internet searches of terms indicative of CP (Attachments 1 and 2). The IP address was assigned to (b)(6), (b)(7)c DOT-issued computer. DOT-OIG conducted an analysis of (b)(6), (b)(7)c DOT-issued computer and found evidence that supported the results of the Bluecoat log analysis.

The possession, distribution, and/or receipt of child pornography constitutes a federal crime in violation of 18 USC § 2252 (Certain activities relating to material involving the sexual exploitation of minors) and/or 18 USC § 1466A (obscene visual representations of the sexual abuse of children). This activity is also in violation of Standards of Ethical Conduct for Federal Employees codified under 5 C.F.R § 2635.704, Use of Government Property.

All DOT federal employees, contractors, and other personnel who are provided access to DOT information or to DOT information systems are required to acknowledge the DOT Rules of Behavior annually. This is done either through the DOT online training management systems (TMS) for employees, or the DOT Security Awareness Training (SAT) application for its contractors. Section 4(d), Use of Government Office Equipment, DOT Order 1351.37, Departmental Cyber Security Compendium, Appendix E, DOT Rules of Behavior (Attachment 3), specifically addresses the use of government equipment.

> *4. Use of Government Office Equipment, (d) I understand that the viewing of pornographic or other offensive or graphic content is strictly prohibited on DOT furnished equipment and networks, unless explicitly approved by Secretarial Office Head or Component Administrator in order to support official duties.*

[1] A network device that maintains a log of websites visited by computers connected to the DOT network.

DETAILS:

Review of (b)(6), (b)(7)c *DOT-issued laptop computer*

On March 14, 2012, the OIG's Computer Crimes Unit (CCU) began analysis of a forensic image[2] of the hard disk drive (HDD) on (b)(6), (b)(7)c DOT-issued laptop computer. Analysis of all allocated[3] images located on the HDD did not identify sexually explicit images any kind.

Analysis of the unallocated space[4], Hiberfil.sys[5] and Pagefile.sys[6] on the HDD identified sexually explicit images to include obscene visual representations of sexual abuse of children (specifically, images of a cartoon nature) . This analysis involved carving out files with a .JPG file header from unallocated space using Foremost[7]. Carving is a process of locating a deleted file, either in its entirety or through fragments, by searching for its unique file header[8] and following the data string. The data carve resulted in the identification of approximately 4,833 image files, including 1,340 pornographic image files of which 310 of these files appeared to contain obscene visual representations of sexual abuse of children (cartoon in nature). Due to the explicit nature of these images, they were not included in this report but will be made available to authorized personnel upon request. No other relevant data was found. (Attachment 4)

Review of the System Registry determined that (b)(6), (b)(7)c was using Mozilla Firefox with his browser set to delete browsing history when closed. (b)(6), (b)(7)c confirmed these settings during an interview.

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[2] Files that contain the data from the source media that can be restored to other media in such a manner that the bit-by-bit order on the source drive is the same as the restored drive.

[3] Allocated files are those files the file system sees as active, non-deleted files and currently referred to by the file system.

[4] Space on media that is not currently referred to by the file system. If this area has been previously used, and not "wiped," it will contain remnants from that prior use. Deleted files are one type of unallocated space.

[5] Source: http://www.forensicswiki.org/wiki/Hiberfil.sys

Hiberfil.sys is the file used by default by Microsoft Windows to save the machine's state as part of the hibernation process. The operating system also keeps an open file handle to this file, so no user, including the Administrator, can read the file while the system is running.

[6] Source: http://searchcio-midmarket.techtarget.com/sDefinition/0,,sid183_gci214300,00.html

In storage, a pagefile is a reserved portion of a hard disk that is used as an extension of random access memory (RAM) for data in RAM that hasn't been used recently. A pagefile can be read from the hard disk as one contiguous chunk of data and thus faster than re-reading data from many different original locations. Windows NT administrators or users can reset the system-provided default size value of the pagefile to meet their particular needs.

[7] Source: http://foremost.sourceforge.net/

Foremost is a console program to recover files based on their headers, footers, and internal data structures.

[8] A unit of information that precedes data. In file management, a header is a region at the beginning of the file that may contain information such as date created and size and type of file.

A review of (b)(6), (b)(7)c Firefox user account profile (b)(6), (b)(7)c provided investigators with a list of search terms used by (b)(6), (b)(7)c in the conduct of this alleged web activity, to include: "hentai," "hentai + mother + daughter + dog," "hentai + anal + balls," and "hentai + anal + animal." (Attachment 5)

Monitor of (b)(6), (b)(7)c *DOT-issued Computer*

On August 4, 2011, the DOT-OIG installed monitoring software on (b)(6), (b)(7)c DOT-issued computer to monitor and record (b)(6), (b)(7)c Internet activity. The monitoring software recorded (b)(6), (b)(7)c online activities and captured screen shots of (b)(6), (b)(7)c desktop display at the time key words were typed into the browser. The screen shots included searches for "hentai loli," "dancing girls," "lesbian loli," "hentai my little pony," "hentai beautiful twins," and "hentai blood." Due to the explicit nature of the images contained in these screen shots, they were not included in this report, but will be made available to authorized personnel upon request. Keystrokes recorded by the monitoring software (Attachment 6) included the following terms:

- *beautiful twinsstella white nights*
- *drawings lesbian*
- *nami nico closeuhardpuffy*
- *abby winters bdsm*
- *broken hymenfuta growing penishentai*
- *puffy nipplesphoto*
- *longhentai*
- *virginembarrassedmilton twinsblood*
- *fishnet stockings*
- *clitoris*
- *my hentai dog and showlady and the tramp*
- *little lesbian loli*
- *hentai loli*
- *leslita*
- *luckiest peemmahentai*

All monitoring activities ceased as of September 15, 2011, and the monitoring software was removed on September 27, 2011.

Sample Time Analysis

The DOT-OIG conducted a time analysis for the month of December 2010 to determine how much time (b)(6), (b)(7)c spent searching and viewing pornographic and other offensive material on the Internet while at work with DOT. The analysis was based on time data provided within the Bluecoat logs. Specifically, the Bluecoat logs capture how long it takes to idenfity and produce web content after a user enters a search string. DOT-OIG concluded (b)(6), (b)(7)c spent approximately 22 hours (avg. 37 min/day) actively searching out online content. By multiplying the value of approximately 22 hours/month by 12 months, the figure for time spent by (b)(6), (b)(7)c per year actively searching online content is approximately 264 hours/year (11 days). This calculation is based on a combination of the DOT-OIG's time analysis and (b)(6), (b)(7)c admissions during (b)(6), (b)(7)c interview with DOT-OIG agents. This calculation does not take into account how much time (b)(6), (b)(7)c may have spent actually viewing the online content.

Interview of (b)(6), (b)(7)c *11/09/2011*

On November 9, 2011, DOT-OIG agents interviewed (b)(6), (b)(7)c (b)(6), (b)(7)c regarding allegations of possible criminal conduct which included searching for and accessing CP. During this interview, (b)(6), (b)(7)c admitted to using his DOT-issued laptop computer at work to search for sexually explicit material using Firefox web browser and Google Images. (Attachment 7) (b)(6), (b)(7)c consented to a search of (b)(6), (b)(7)c home personal desktop computer. No relevant data was found on the HHD. (Attachment 8)

Interview of (b)(6), (b)(7)c *11/17/2011*

On November 17, 2011, DOT-OIG agents interviewed (b)(6), (b)(7)c at DOT headquarters (HQ), 1200 New Jersey Ave., SE, Washington, DC 20591 (Attachment 9). (b)(6), (b)(7)c was asked if (b)(6), (b)(7)c was willing to provide a sworn, written statement (Attachment 10) regarding (b)(6), (b)(7)c online activities, and (b)(6), (b)(7)c agreed. In (b)(6), (b)(7)c written statement, (b)(6), (b)(7)c admitted to using (b)(6), (b)(7)c work computers, over a six or seven year period, to search for sexually explicit material and to play games while at work. (b)(6), (b)(7)c explained that in the past two years (b)(6), (b)(7)c has been conducting Google Image searches for terms like “hentai,” “futanari,” and “loli.” (b)(6), (b)(7)c added that (b)(6), (b)(7)c searches were for cartoon representations and not for pornography involving actual children. (b)(6), (b)(7)c admitted (b)(6), (b)(7)c understood (b)(6), (b)(7)c behavior was wrong and (b)(6), (b)(7)c would periodically discontinue (b)(6), (b)(7)c activities and then start up again.

DOJ referral

On January 10, 2012, CCA (b)(6), (b)(7)c briefed USDOJ Trial Attorney (b)(6), (b)(7)c on the status of the case and results of the investigation. The United States Attorney's Office declined the case for prosecution as there were no chargeable CP images.

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INDEX OF ATTACHMENTS

No.	DESCRIPTION
1.	Full Log Detail_ (b)(6), (b)(7)c
2.	Search terms for IP address (b)(6), (b)(7)c
3.	DOT Employee Awareness Guide to Information Assurance and Technology Security
4.	MOA - HDD Analysis (work PC)
5.	Firefox user account profile searches
6.	KeystrokeDetail-1_redacted
7.	Memorandum of Activity – *Interview of* (b)(6), (b)(7)c *11/09/2011*
8.	MOA - HDD Analysis (home PC)
9.	Memorandum of Activity – *Interview of* (b)(6), (b)(7)c *11/17/2011*
10.	Written Affidavit of (b)(6), (b)(7)c 11/17/2011

U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I11E010SINV	DATE 06/13/2012
TITLE (b)(6), (b)(7)c FMCSA Illinois Division	PREPARED BY: (b)(6), (b)(7)c Senior Special Agent Special Investigations, JI-3	STATUS FINAL
	DISTRIBUTION File FMCSA	APPROVED BY: evc rce

TABLE OF CONTENTS

ATTACHMENTS:

1. FMCSA Memorandum for Recording or Monitoring Conversations
2. DOT Order 1600.17C
3. Illinois Compiled Statutes regarding Eavesdropping
4. (b)(6), (b)(7)c nterview Memorandum of Activity
5. (b)(6), (b)(7)c Interview Memorandum of Activity
6. (b)(6), (b)(7)c email to (b)(6), (b)(7)c about recording conversations
7. (b)(6), (b)(7)c Meeting Memorandum of Activity
8. (b)(6), (b)(7)c nterview Memorandum of Activity
9. Forensic Media Analysis Report (partial - Background and Summary pages only)

BACKGROUND

This case involved the investigation of reported misconduct by a DOT/FMCSA employee suspected of recording workplace conversations in violation of DOT policy and state law. The investigation also identified federal statutes that were potentially applicable to the case. The following policies and laws are relevant to the investigation.

- A memorandum issued by the Acting FMCSA Deputy Administrator on August 1, 2002, to all FMCSA employees established policy regarding recording or monitoring conversations. (**Attachment 1**) The memorandum specified that under no circumstances shall an FMCSA employee or contractor use any electronic or mechanical device to overhear, transmit, or record conversations in the course of official business. An exception to the recording prohibition was allowed in instances where there was a specific request to record or monitor and specific consent was given by each individual who was a part of the conversation. Monitoring or recording was prohibited if one individual involved in the communication does not specifically consent.

- DOT Order 1600.17C, dated August 27, 2003, prescribes policy regarding the use of electronic recording or monitoring equipment within the Department. **(Attachment 2)** The order directs that DOT employees shall not engage in the clandestine, surreptitious, or other covert use of recording or monitoring devices, except as provided for in the order. For non-telephone audio recordings, the order permits recordings of two or more persons by DOT employees, to include supervisor and employee, if the intention to record is announced at the beginning of a meeting or there is a requirement to maintain a record of a proceeding.

- The Illinois Criminal Code provides that an eavesdropping device cannot be used to record or overhear a conversation without the consent of all parties to the conversation. (**Attachment 3**) Violations of the eavesdropping law are punishable as felonies and civil liability for actual and punitive damages is also authorized.

- Federal statutes specify criminal penalties for the interception of oral communications in certain instances (18 USC § 2511) and for the removal of property to prevent seizure by government officials authorized to take such property (18 USC § 2232).

SYNOPSIS

This investigation was initiated in response to a referral from FMCSA regarding allegations of misconduct by (b)(6), (b)(7)c FMCSA (b)(6), (b)(7)c involving suspected violations of FMCSA and DOT policies, as well as state wiretapping laws. According to the referral, (b)(6), (b)(7)c was granted one-time permission by (b)(6), (b)(7)c (b)(6), (b)(7)c to record a telephone conversation between the two regarding program

assignments. (b)(6), (b)(7)c reported (b)(6), (b)(7)c indicated (b)(6), (b)(7)c recorded many conversations between them. (b)(6), (b)(7)c and (b)(6), (b)(7)c reported (b)(6), (b)(7)c engaged in conversations with (b)(6), (b)(7)c where (b)(6), (b)(7)c advised them (b)(6), (b)(7)c was recording the conversations. Both (b)(6), (b)(7)c and (b)(6), (b)(7)c described behavior by (b)(6), (b)(7)c suggesting (b)(6), (b)(7)c may have used (b)(6), (b)(7)c government-owned laptop to record the conversations.

OIG coordinated with FMCSA staff to retrieve for forensic analysis the government-owned computer assigned to (b)(6), (b)(7)c The coordination included making arrangements for OIG to meet (b)(6), (b)(7)c at FMCSA's Midwestern Service Center (MSC) to retrieve the computer. OIG recovered the computer from (b)(6), (b)(7)c at the MSC in November 2011.

OIG's forensic analysis of the computer did not locate any evidence of audio files or other indications of (b)(6), (b)(7)c recording conversations; nor did it yield any information suggesting (b)(6), (b)(7)c tampered with data on the computer after OIG initiated contact with (b)(6), (b)(7)c However, statements made by (b)(6), (b)(7)c to (b)(6), (b)(7)c and (b)(6), (b)(7)c email communication, and conduct when contacted by OIG provided credible evidence that (b)(6), (b)(7)c created a situation that would lead a reasonable person to believe (b)(6), (b)(7)c recorded workplace conversations.

Below are the details of this investigation.

DETAILS

Allegation 1: (b)(6), (b)(7)c recorded workplace conversations in violation of DOT policies and state law.

FINDINGS

DOT/OIG interviewed (b)(6), (b)(7)c and (b)(6), (b)(7)c regarding information (b)(6), (b)(7)c had about (b)(6), (b)(7)c reported recording of workplace conversations. During (b)(6), (b)(7)c interview with OIG, (b)(6), (b)(7)c advised that, in May 2011, (b)(6), (b)(7)c met with (b)(6), (b)(7)c regarding an inspection report (b)(6), (b)(7)c prepared. During the meeting, (b)(6), (b)(7)c informed (b)(6), (b)(7)c was recording the conversation. (b)(6), (b)(7)c found the situation uncomfortable and awkward, yet (b)(6), (b)(7)c did not respond directly to (b)(6), (b)(7)c notice of recording the conversation. (b)(6), (b)(7)c commented that (b)(6), (b)(7)c had (b)(6), (b)(7)c government-issued laptop with (b)(6), (b)(7)c at the meeting and, based on (b)(6), (b)(7)c actions with the computer, (b)(6), (b)(7)c believed (b)(6), (b)(7)c was using the computer to record the conversation. (**Attachment 4**)

During (b)(6), (b)(7)c interview, (b)(6), (b)(7)c informed OIG that (b)(6), (b)(7)c met with (b)(6), (b)(7)c following the May 2011 meeting (b)(6), (b)(7)c had with (b)(6), (b)(7)c (b)(6), (b)(7)c came to (b)(6), (b)(7)c because (b)(6), (b)(7)c was upset and complained about (b)(6), (b)(7)c About five minutes into their conversation (b)(6), (b)(7)c told (b)(6), (b)(7)c was taping the conversation. (b)(6), (b)(7)c said that during their conversation (b)(6), (b)(7)c had (b)(6), (b)(7)c assigned government-owned laptop computer on (b)(6), (b)(7)c

desk. (b)(6), (b)(7)c could not see what was on the computer, but said (b)(6), (b)(7)c was "messing" with it throughout their conversation. (b)(6), (b)(7)c spoke with (b)(6), (b)(7)c after the meeting and concluded (b)(6), (b)(7)c could have used the government laptop as the recording device. (b)(6), (b)(7)c did not address the issue of recording conversations in the workplace with (b)(6), (b)(7)c rather he just took it as (b)(6), (b)(7)c was in an angry mood and let it go at that. (**Attachment 5**)

In addition to the statements (b)(6), (b)(7)c made to (b)(6), (b)(7)c about recording workplace conversations, FMCSA provided OIG with a copy of an email wherein (b)(6), (b)(7)c acknowledged recording (b)(6), (b)(7)c In an email dated September 15, 2011, (b)(6), (b)(7)c wrote to (b)(6), (b)(7)c did not say (b)(6), (b)(7)c recorded most other federal employees, **just you** (b)(6), (b)(7)c will let you hear the recording." (**Attachment 6, emphasis in original**)

When OIG special agents went to recover FMCSA's computer from (b)(6), (b)(7)c held up what appeared to be a cell phone, pointed it at the agents, and declared (b)(6), (b)(7)c was recording the encounter. (b)(6), (b)(7)c demonstrated the behavior again when (b)(6), (b)(7)c returned to the FMCSA office a second time and spoke to OIG special agents. And at a third encounter with OIG special agents, (b)(6), (b)(7)c advised (b)(6), (b)(7)c wanted to record the conversation. OIG agents, however, told (b)(6), (b)(7)c they did not consent to the conversation being recorded. (**Attachment 7**)

In February 2012, (b)(6), (b)(7)c met with FMCSA (b)(6), (b)(7)c at the MSC for a password reset. According to (b)(6), (b)(7)c while talking outside, (b)(6), (b)(7)c told (b)(6), (b)(7)c that (b)(6), (b)(7)c wanted to show (b)(6), (b)(7)c the video recording of what (b)(6), (b)(7)c characterized as an "assault" by OIG (b)(6), (b)(7)c said the video was on (b)(6), (b)(7)c personal cell phone, but (b)(6), (b)(7)c refused to view the video because (b)(6), (b)(7)c thought it was outside the bounds of a professional relationship. (**Attachment 8**)

OIG's forensic analysis of the FMCSA computer turned-in by (b)(6), (b)(7)c resulted in no identification of pertinent audio files or files containing evidence of recorded conversations. (**Attachment 9**) Although no audio files or recordings were found on the computer, (b)(6), (b)(7)c statements and conduct at the time reasonably led officials to believe (b)(6), (b)(7)c recorded workplace conversations in a manner not consistent with DOT policies and potentially in violation of state and federal laws.

Allegation 2: (b)(6), (b)(7)c intercepted oral communications and removed property to prevent seizure.

FINDINGS

When OIG special agents contacted (b)(6), (b)(7)c at the MSC to retrieve (b)(6), (b)(7)c FMCSA-issued computer, they identified themselves to (b)(6), (b)(7)c and asked if the computer in (b)(6), (b)(7)c possession was the one assigned to (b)(6), (b)(7)c by FMCSA. (b)(6), (b)(7)c acknowledged it was. OIG

agents directed (b)(6), (b)(7)c to surrender the computer as evidence in an OIG investigation. (b)(6), (b)(7)c refused to surrender it without "proper paperwork." (b)(6), (b)(7)c left the MSC with the computer, returned a short while later, met with the OIG agents, and again refused to surrender the computer. (**Attachment 7**)

ADDITIONAL INFORMATION

(b)(6), (b)(7)c was not interviewed as part of this investigation because (b)(6), (b)(7)c insisted on recording a proposed interview when OIG contacted (b)(6), (b)(7)c at the MSC in November 2011. OIG agents did not agree to (b)(6), (b)(7)c recording the interview. OIG subsequently proposed interviewing (b)(6), (b)(7)c at DOT Headquarters (HQ); however, FMCSA advised based on (b)(6), (b)(7)c past conduct at DOT HQ they did not agree with this proposal.

The statements (b)(6), (b)(7)c made to (b)(6), (b)(7)c and OIG special agents that (b)(6), (b)(7)c was recording conversations with them [in the workplace] served as the basis for the allegation (b)(6), (b)(7)c intercepted oral communications in violation of federal law. (b)(6), (b)(7)c conduct when contacted by OIG at the MSC in November 2011 raised concerns about the removal or destruction of property to prevent seizure in violation of federal law.

The findings of OIG's forensic review and details of (b)(6), (b)(7)c conduct were referred to the U.S. Attorney's Office in Chicago for prosecution consideration. The case was not accepted for prosecution. Based largely on the lack of direct evidence that (b)(5), (b)(6), (b)(7)c actually made any recordings of workplace conversations the results of this investigation were not referred to a state prosecutor for review.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I11G0030500	12/28/2012
(b)(6), (b)(7)c	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-5 (1)	(b)(6), (b)(7)c 1/5
18 USC § 666 – Theft or Bribery 18 USC § 1952 – Hobbs Act Extortion		APPROVED MTM

DETAILS

A joint investigation with the Federal Bureau of Investigation (FBI) was opened on information provided by the Federal Highway Administration (FHWA) Ohio Division that professional service consultants were being told to make political contributions if they wanted a contract. Some of the consultant contracts were valued upwards of $35 million. The consultant contracts were moved up half a year for design; however, the work could not be done for about half a year. According to the allegations, (b)(6), (b)(7)c (b)(6), (b)(7)c solicited companies (including Parsons Brinkerhoff (PB)) to give money to the Governor's campaign and the Ohio Democratic Party. Further, the term "political programmatic contracts" was used by consultants LJB out of Dayton, OH, to describe the consultant awards. Beginning in May (2010), consultants allegedly had to give money to receive contracts in a pay to play fashion.

It was further alleged that as a result of political contributions, ODOT's Central Office manipulated the workload requirements and pre-select the firms by essentially leapfrogging those selected over other (higher ranked) consultants. According to a FHWA major projects engineer, the selections were inconsistent, not reasonable, and ODOT had no basis for making them. Several other consultants were also allegedly approached to make contributions in a questionable manner.

It was also alleged that after PB was awarded work on a Federal Railroad Administration (FRA) high speed rail project; (b)(6), (b)(7)c came with (b)(6), (b)(7)c (b)(6), (b)(7)c and wanted a $100,000 political contribution. After PB refused, (b)(6), (b)(7)c later asked for $50,000 political contribution.

ODOT consultant ratings and selection information was reviewed and numerous individuals were interviewed. Although no individuals or consultants indicated that they had to make political contributions to receive a contract, some felt pressure to make contributions to various campaign coffers. The investigation confirmed that ODOT's Central Office utilized "workload" points to manipulate the selection process. "Workload" points were discretionary points awarded by ODOT's Central Office which altered the consultant selctions as recommended by the respective district offices. Additionally, on at least three instances, when ODOT Central Office could not use "workload" as a mechanism to select a different consultant than the field ranked highest, it further manipulated the system by requesting the district to re-score the consultants so they were within range of awarding "workload" points to select a different consultant (Attachments 1-28).

Although the investigation did not substantiate the allegations of public corruption, it did confirmed that ODOT Central Office's actions appear to have violated the Brook's Act. The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price. Engineering and design related services are defined in 23 U.S.C. §112 (b)(2)(A) and 23 C.F.R. §172.3 to include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or other related services. These other services may include professional engineering related services, or incidental services that may be performed by a professional engineer, or individuals working under their direction, who may logically or justifiably perform these services (Attachment 29).

The justification presented by some within ODOT's Central Office was that the respective district offices did not understand the amount of work the consultants had received. (b)(6), (b)(7)c advised that political appointees within ODOT intervened without justification and manipulated several of the selections as requested (Attachments 1, 14-16, 19, 21, 23).

Initially, FHWA indicated that it was interested in pursuing possible administrative remedies and ODOT rescinded approximately $49 million of the affect selections. However, during a follow-up inquiry, it was learned that FHWA changed its position on administrative action. The reason provided by (b)(6), (b)(7)c

(b)(6), (b)(7)c FHWA, was that FHWA (b)(6), (b)(7)c did not want ODOT complaining to FHWA (b)(6), (b)(7)c

Concerns raised by (b)(6), (b)(7)c were forwarded to the OIG's Integrity Division for potential follow-up. On Novemeber 1, 2011, JRI-5 forwarded information to J-3 (Attachments 30-31).

On September 12, 2012, the matter was declined for criminal prosecution by the U.S. Attorney's Office, Southern District of Ohio. On October 15, 2012, the investigative findings were passed on to the FHWA via an administrative ROI (Attachments 32-34).

FHWA (b)(6), (b)(7)c responded to the OIG in a letter dated November 29, 2012. In (b)(6), (b)(7)c letter, (b)(6), (b)(7)c acknowledges actions taken by FHWA; however, disagrees with the investigative findings that ODOT's actions violated the Brook's Act (Attachment 35). A subsequent meeting between (b)(6), (b)(7)c and (b)(6), (b)(7)c occurred where the matter was discussed futher.

Based upon the investigative findings, and declination, it is hereby recommended the investigation be closed.

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Index of Attachments

No.	Description
1	Memorandum of Activity – (b)(6), (b)(7)c 12/14/2010
2	Memorandum of Activity – (b)(6), (b)(7)c 10/21/2010
3	Memorandum of Activity – (b)(6), (b)(7)c 10/26/2010
4	Memorandum of Activity – (b)(6), (b)(7)c – 11/04/2010
5	Memorandum of Activity – (b)(6), (b)(7)c - 10/26/2010
6	Memorandum of Activity – (b)(6) – 10/21/2010
7	Memorandum of Activity – (b)(6), (b)(7)c - 02/15/2011
8	Memorandum of Activity – (b)(6), (b)(7)c - 12/16/2010
9	Memorandum of Activity – (b)(6), (b)(7)c - 12/14/2010
10	Memorandum of Activity – (b)(6), (b)(7)c - 02/16/2011
11	Memorandum of Activity – (b)(6), (b)(7)c - 12/16/2010
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13	FBI 302 –
14	FBI 302 –
15	FBI 302 – (b)(6), (b)(7)c
16	FBI 302 –
17	FBI 302 –

18 FBI 302 -

19 FBI 302 -

20 FBI 302 -

21 FBI 302 -

22 FBI 302 -

23 FBI 302 - (b)(6), (b)(7)c

24 FBI 302 -

25 FBI 302-

26 FBI 302 -

27 FBI 302 -

28 FBI 302 -

29 FHWA Memorandum dated 12/12/2005 – re: Brooks Act

30 Email correspondence related to JRI-5 information referral to J-3

31 Memorandum of Activity – (b)(6), (b)(7)c – 10/12/2011

32 Declination from the U.S. Attorney's Office

33 OIG correspondence to FHWA – 10/15/2012

34 Administrative ROI

35 FHWA correspondence to OIG – 11/29/2012

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: Recommendation to Close OIG File I11G0050300

Date: September 10, 2013

From: (b)(6), (b)(7)c, ASAC, JI-3

Reply to Attn of: X 6-4189

To: Ronald Engler
Director, Special Investigations, JI-3

The investigation was initiated based on a written complaint received from a confidential source alleging theft, contracting improprieties, conflict of interest and prohibited personnel practices by (b)(6), (b)(7)c (b)(6), (b)(7)c Specifically, the source alleged (b)(6), (b)(7)c steered contracts to a (b)(6), (b)(7)c company, P.J.'s Pen, (b)(6), (b)(7)c

In 2004, P.J's Pen (b)(6), (b)(7)c was awarded a $54,000 sole source contract for editorial medial consulting services. (b)(6), (b)(7)c (b)(6), (b)(7)c approximately six months later and authorized nine modifications into 2006 causing the contract to skyrocket to $432,000. (b)(6), (b)(7)c billed for services under (b)(6), (b)(7)c Between February 2005 and August 2006, (b)(6), (b)(7)c was paid $83,025 and (b)(6), (b)(7)c was paid $91,350 via P.J's Pen contract with MWAA. P.J's Pen was also alleged to have paid for (b)(6), (b)(7)c in return for contract award.

Possible violations

- 18 USC § 208 – Act affecting a personal financial interest.
- 18 USC § 666 – Theft or bribery concerning programs receiving federal funds.

DOT/ OIG assisted the FBI in conducting numerous interviews, surveillances and review of subpoenaed records. However, the FBI advised that Assistant United

States Attorney,[redacted] (b)(6), (b)(7)c Eastern District of Virginia, declined prosecution because the investigation did not disclose evidence to support federal prosecution within the statutes of limitations or sufficient information to warrant continued investigation into referenced matter. FBI Agent[redacted] (b)(6), (b)(7)c advised that[redacted] (b)(6), (b)(7)c agency would close this investigation. For these reasons, I recommend we close our file, as well.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I11G0270500	12/20/2013
Nebraska Northwestern Railroad 223 Cloverleaf Road Chadron, NE 69337	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-5 (1)	(b)(6), (b)(7)c 1/2
18 USC § 1001 – False Statements		APPROVED MTM

DETAILS

On September 13, 2011, a joint investigation with the Federal Bureau of Investigation (FBI) was opened on allegations of grant fraud involving a Transportation Investment Generating Economic Recovery (TIGER) 2 stimulus project. Specifically, the FBI was investigating allegations that public officials in Chadron, Nebraska may be involved in purchasing property prior to properties being acquired under the grant. The grant in question was identified as a $6.1 million project receiving $4.9 million in federal monies for freight rail reactivation. It was alleged that the (b)(6), (b)(7)c and the Northwest Economic Development Corporation were involved in the scheme. Further, there were allegations that city officials misdirected grant monies.

Numerous individuals were interviewed and records were reviewed. The information obtained did not substantiate the vast majority of the allegations. The investigation did substantiate that (b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c advised that invoicing was done at the direction of NNWR's former accountant David Noble (deceased) (b)(6), (b)(7)c (b)(6), (b)(7)c

FRA was informed of the circumstances surrounding the purchase of railroad ties and asked if the manner used was problematic. Subsequently, on June 4, 2013, FRA advised that after extensive communications with the City of Chadron (Grantee) and after reviewing relevant regulations, laws, and agreements, FRA found no evidence demonstrating that the purchase of railroad ties for the project was carried out in an

inappropriate manner. Based on the procurement standards of Part 18 (49 C.F.R.) and the cost principles of OMB Circular A-87, "Cost Principles for State and Local Governments," as amended, the process the City employed and the purchase price paid for the ties appeared reasonable. The City used a certified bid price method of procurement that is authorized under Nebraska law. The City confirmed the acceptability of that process with the FRA in advance of using it. The $27.22 paid for the ties was consistent with the price paid for a separate TIGER II project being carried out by the State of South Dakota (for which competitive bids were received). The City confirmed the appropriateness of the price with FRA engineers who confirmed that the price was reflective of area prices.

On December 24, 2013, DOT OIG SA (b)(6), (b)(7)c was notified by FBI SA (b)(6), (b)(7)c that the investigation has been declined by the U.S. Attorney's Office and the FBI is closing its file on the matter. Accordingly, this case is hereby recommended to be closed.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION TITLE	INVESTIGATION NUMBER	DATE
ExxonMobil Silvertip Pipeline Laurel, Montana	I11H0010903	August 1, 2013
	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS Final
	DISTRIBUTION JRI-9 (1)	1/3
VIOLATION(s): 49 USC 5124: Hazardous Materials		APPROVED WS

DETAILS:

On July 5, 2011, the U.S. Department of Transportation (DOT) Office of Inspector General (OIG) initiated an investigation based on information received from (b)(6), (b)(7)c (b)(6), (b)(7)c alerted the OIG of a reportable accident that occurred on July 1, 2011 on the ExxonMobil Silvertip pipeline (approx. 69 miles of pipe which run from Elk Basin, WY to Billings, MT) that resulted in the release of approximately 750 to 1000 barrels of crude oil into the Yellowstone River near Laurel, MT. Following receipt of a complaint initiated by the Public Works Department for the City of Laurel, MT in October 2010, PHMSA and the City of Laurel reviewed scour and bank erosion along the river, and ExxonMobil performed a depth-of-cover survey which revealed there were at least five feet of cover at all measured points. Again in June 2011, right before the failure, the City of Laurel expressed concern, and ExxonMobil reported that there was at least 12 feet of cover. OIG initiated this investigation jointly with the Environmental Protection Agency (EPA) Criminal Investigations Division (CID) at the request of the United States Attorney's Office (USAO) for the District of Montana to determine if the spill was caused by criminal action or negligence on the part of ExxonMobil.

In July 2012, the damaged pipe was removed from the river and analyzed by Kiefner & Associates, a pipeline testing laboratory. On August 8, 2012, OIG received the final report on the analysis of the pipe as produced by Kiefner & Associates which held that although the pipe broke at a weld location, there were no problems with the weld. The report also said that the exposed pipe broke due to vibration of the water flow and pressure from debris in the river.

In October 2012, PHMSA provided its assessment of the Kiefner & Associates report. PHMSA said it agreed with the conclusions of Kiefner & Associates that the cause of the release was determined to be a severed pipeline near the south shore of the Yellowstone River and occurred after a prolonged period of high runoff and flooding.

In January 2013, PHMSA provided its final report of the accident. (Attached.) PHMSA found the following contributing factors added to the release volume:

1. Procedural and Training Issue – ExxonMobil's had a lack of use of elevation profiles in controller and supervisor training. Had the company's emergency shutdown procedures included the requirement that these remote control valves (RCV) were to be closed immediately after an abnormal event, the crude oil release volume would have been much less and the location of the release would have been identified more quickly by observing the static pressure upstream of the closed RCV.

2. Emergency Response Training Issue - The time taken by ExxonMobil personnel allowed crude oil to drain into the Yellowstone River for 46 minutes and 12 seconds after the line was shut down and isolated by RCV 1066.

3. Emergency Response Training Issue - PHMSA agreed with ExxonMobil's general assessment for draining product away from a release, but PHMSA also required ExxonMobil to modify their operating instructions for the Silvertip Pipeline to include that controllers were required to close all RCVs immediately after an abnormal event occurs.

4. Emergency Response Training and Procedural Issue – ExxonMobil did not have a specific, written procedure to notify all appropriate personnel of localized conditions that would impact their pipeline system. Although the facility controller was generally aware that there had been some flooding in Montana, there was no specific notification required, nor was there any contingency training in anticipation of possible problems to be encountered from excessive flooding.

In January 2013, PHMSA advised the OIG that although the above issues were cited in the final report, PHMSA also advised that it did not consider the failure to be criminal in nature for the purposes of an ongoing OIG criminal investigation of violations of Title 49, because there were no intentional maintenance or training violations discovered during its review of the accident and post accident procedures. PHMSA also advised that it was proceeding with a Notice of Probable Violation against ExxonMobil for the

deficiencies cited above. The Notice included a proposed $1.7 million administrative penalty.

On July 30, 2013, EPA/CID advised the OIG that the USAO was considering a criminal charge against the company for a negligent Clean Water Act violation; however, there was not sufficient communication back to the control center in Houston during the event, and ExxonMobil did not have a plan in place to ensure that the control center in Houston would be properly and more timely notified if an event similar to this occurred. The USAO advised they would not be pursuing charges for Title 49 violations, citing that PHMSA's assessment of the accident, and specifically that there were no intentional acts on the part of ExxonMobil with respect to failure to train personnel or properly maintain the pipeline.

On July 31, 2013, the Assistant United States Attorney (b)(5), (b)(6), (b)(7)c advised that the USAO concurred with OIG's closing of this matter. (b)(5), (b)(6), (b)(7)c investigation did not disclose any intentional or willful violation of Title 49, and as such, (b)(6), (b)(7)c office would not be pursuing any charges pursuant to that statute.

Based on the facts and circumstances as detailed above and specifically that the USAO has declined to pursue charges against ExxonMobil for violations of Title 49, OIG is closing its case with no further action anticipated. PHMSA has been so notified.

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Attachment (1)

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I12A0050300	2/22/2013
TITLE Aviation Maintenance Training Technologies, Inc. (AVMATT) (b)(6), (b)(7)c	**PREPARED BY SPECIAL AGENT** (b)(6), (b)(7)c	**STATUS** FINAL
	DISTRIBUTION JRI-3	**APPROVED BY** KAJ 2/26/13

PREDICATION:

This investigation is based upon a referral from the Office of Security and Hazardous Materials Safety, Federal Aviation Administration (FAA), Atlanta, Georgia, with regard to Aviation Maintenance Training Technologies, Inc., Harrisburg, North Carolina (AVMATT). AVMATT is falsely representing the FAA by utilizing fraudulent FAA letters which state AVMATT is certified and endorsed by the FAA. These documents also yield forged signatures of FAA employees.

AVMATT is soliciting business using these fraudulent FAA memoranda as well as training aircraft mechanics. AVMATT has also provided certificates of completion to employees of Jet Aircraft Maintenance Inc., Miami, FL, stating the employee was certified and in compliance with FAA Regulations. Jet Aircraft Maintenance, Inc. was unaware that the FAA endorsements were false.

SUMMARY:

In brief, our investigation found that AVMATT supplied Jet Aircraft Maintenance with fraudulent letters that gave AVMATT false accommodations on behalf of the FAA and bore a forged signature of a retired FAA employee. Based on investigative findings, the U.S. Attorney's Office declined to prosecute (b)(5)

DETAILS:

ALLEGATION – AVMATT fraudulently used a document bearing a U.S. Government agency insignia

Interview of (b)(6), (b)(7)c

(b)(6), (b)(7)c stated that (b)(6), (b)(7)c met (b)(6), (b)(7)c at the Charlotte - Douglas International Airport in the mid 1990's. At that time, (b)(6), (b)(7)c explained that (b)(6), (b)(7)c had a professional relationship.

(b)(6), (b)(7)c said that (b)(6), (b)(7)c came to (b)(6), (b)(7)c in or about January of 1996 and asked for a letter explaining that AVMATT did not need to hold an FAA certification in order to provide training. (b)(6), (b)(7)c told (b)(6), (b)(7)c that (b)(6), (b)(7)c was trying to get work with an Italian company that wanted proof (b)(6), (b)(7)c could provide training. (b)(6), (b)(7)c agreed to write the letter because it did not violate any rules or regulations.

(b)(6), (b)(7)c was shown a copy of the FAA letter obtained from Jet Aircraft Maintenance, Inc.

After reviewing the letter, (b)(6), (b)(7)c stated that the date on the letter was the same, and the letterhead format was the same, however, the narrative and position title had been altered. (b)(6), (b)(7)c explained that the signature on the letter was not (b)(6) and (b)(6), (b)(7)c would never write a letter making such claims for anyone (b)(6), (b)(7)c also would have never used the title "Airworthiness Safety Inspector & PMI for AMT," (b)(6), (b)(7)c actual title was (b)(6), (b)(7)c

(b)(6), (b)(7)c explained that the FAA does not approve or regulate third party training companies such as AVMATT, and thus would never provide such letters stating its approval. It is up to the repair station, Jet Aircraft Maintenance, to verify the credentials of the third party vendor.

Interview of (b)(6), (b)(7)c

(b)(6), (b)(7)c stated that (b)(6), (b)(7)c began doing business with AVMATT in 2006. When (b)(6), (b)(7)c spoke with (b)(6), (b)(7)c (b)(6), (b)(7)c asked for some type of credential or letter that would verify their certification as a Part 147 school. Shortly thereafter, (b)(6), (b)(7)c either emailed or faxed (b)(6), (b)(7)c two letters which bore the insignia of the FAA, as well as the Charlotte Flight Standards District Office (FSDO) letterhead.

After reviewing the letters, (b)(6), (b)(7)c made an agreement with (b)(6), (b)(7)c to provide training to employees of Jet Aircraft Maintenance, Inc.

In May of 2012, the FAA conducted an audit of (b)(6), (b)(7)c business and asked who was providing the training to (b)(6), (b)(7)c employees. (b)(6), (b)(7)c told them (b)(6), (b)(7)c had been doing business with AVMATT a certified Part 147 school and provided the two letters to the FAA inspectors. Shortly thereafter, the FAA contacted (b)(6), (b)(7)c and explained that the letters (b)(6), (b)(7)c received were fraudulent. (b)(6), (b)(7)c then called (b)(6), (b)(7)c to confront (b)(6), (b)(7)c about the letters. (b)(6), (b)(7)c told (b)(6), (b)(7)c that (b)(6), (b)(7)c knew the letters were fake and would no longer do business with (b)(6), (b)(7)c told (b)(6), (b)(7)c that the letters were legitimate and came from the FAA. (b)(6), (b)(7)c explained that (b)(6), (b)(7)c started doing business with AVMATT because of the letters (b)(6), (b)(7)c provided by the FAA, otherwise (b)(6), (b)(7)c would have found someone else. (b)(6), (b)(7)c has paid AVMATT a substantial amount of money to provide services believing they were a certified Part 147 school.

JUDICIAL REFERRAL:

On November 1, 2012 Special Agent (b)(6), (b)(7)c referred this investigation to Assistant United States Attorney (b)(6), (b)(7)c Western District of North Carolina. AUSA (b)(6), (b)(7)c accepted the case for further investigation.

On January 8, 2013 AUSA (b)(6), (b)(7)c declined to prosecute this case because (b)(5) (b)(5) A federal criminal prosecution is not warranted at this time.

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I12A0050401	October 25, 2012
TITLE **CASE TITLE** Pennywitt-Interference or tampering with an aircraft. **VIOLATION(S)** Title 18 USC, Section 39a	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c DISTRIBUTION JRI-4 w/ Atchments (1)	STATUS Final (b)(6), (b)(7)c 1/3 APPROVED SAC Marlies Gonzalez MTG

SYNOPSIS

Reference Interim Report of Investigation (ROI) dated September 14, 2012.

DETAILS

On October 4, 2012, Jacksonville Sheriff's Office (JSO) allowed Special Agent (SA) (b)(6), (b)(7)c (b)(6), (b)(7)cUnited States Department of Transportation (US DOT), Office of Inspector General (OIG), Jacksonville, FL, to photograph the laser JSO obtained from Tyler Pennywitt, Jacksonville, FL, on June 4, 2012, reference JSO Case # 2012 - 415483. (Attachment 1)

On October 4, 2012, a federal grand jury in the United States District Court (USDC), Middle District of Florida, Jacksonville, FL, indicted Pennywitt on two counts of Title 18 USC, Section 39(A), for aiming a laser light at a JSO helicopter on or about June 3, 2012, and June 4, 2012, Docket # 3:12-cr-172-J-32MCR. (Attachment 2)

On April 17, 2013, Pennywitt pled guilty to count two of the indictment, Docket # 3:12-cr-172-J-32MCR. (Attachment 3)

On August 1, 2013, the USDC, MDFL, Jacksonville, FL, sentenced Pennywitt to one year probation and 50 hours of community service, Docket # 3:12-cr-172-J-32MCR. (Attachment 4)

On August 14, 2013, Pennywitt's (b)(6), (b)(7)c Jacksonville Beach, FL, filed a motion to vacate and set aside judgment and sentence for Pennywitt as a

result of an $11,000 administrative fine the FAA imposed on Pennywitt on August 8, 2013. (Attachment 5)

On August 28, 2013, Assistant United States Attorney (AUSA) (b)(6), (b)(7)c United States Attorney's Office (USAO), MDFL, Jacksonville, FL, filed an unopposed motion to extend time to respond to the motion to vacate and set aside judgment and sentence. The court extended the government's required response deadline to October 11, 2013. (Attachment 6)

On October 11, 2013, AUSA(b)(6), (b)(7)c advised (b)(6), (b)(7)c via email the court granted a second unopposed motion to extend time to respond to the motion to vacate and set aside Pennywitt's judgment and sentence. The next response was due to the court no later than December 11, 2013. (Attachment 7)

At this time, no other investigative activity is required on this case by this office; therefore, this matter is closed. If AUSA(b)(6), (b)(7)c requires additional investigative assistance on this matter, this office will reopen the investigation to address his requests.

EVIDENCE LISTING

JSO is maintaining the laser light obtained from Pennywitt on June 4, 2012.

US DOT/OIG is maintaining no evidence reference this investigation at this time.

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Index of Attachments

No.	Description
1.	Memorandum of Activity – Other – Pennywitt – October 4, 2013.
2.	Indictment – Pennywitt – Docket # 3:12-cr-172-J-32MCR – October 4, 2013.
3.	Plea Agreement and Acceptance of Plea – Pennywitt – Docket # 3:12-cr-172-J-32MCR – April 22, 2013.
4.	Judgment - Pennywitt - Docket # 3:12-cr-172-J-32MCR – August 1, 2013.
5.	Memorandum of Activity – Other – Pennywitt (b)(6), (b)(7)c August 14, 2013
6.	Memorandum of Activity – Other – AUSA (b)(6), (b)(7)c August 28, 2013.
7.	Memorandum of Activity – Email – AUSA (b)(6), (b)(7)c October 11, 2013.

Memorandum

U.S. Department of Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: REVIEW/ACTION: OIG Case #I12E003CCU
Re: (b)(6), (b)(7)c

Date: February 28, 2013

From: (b)(6), (b)(7)c
Special Agent-in-Charg
Headquarters Operations, JI-2

(b)(6), (b)(7)c
dot.gov
2013.02.28 14:39:39
-05'00'

Reply to Attn. of: JI-2
202-366-0384

To: Ronald Hynes
Director, Office of Safety Assurance and Compliance
Federal Railroad Administration

This memorandum and attached documentation are being forwarded for your review and any administrative actions deemed appropriate. The memorandum summarizes the results of an Office of Inspector General (OIG) investigation involving (b)(6), (b)(7)c (b)(6), (b)(7)c Federal Railroad Administration, U.S. Department of Transportation (DOT), Washington, DC. The details of the investigation are contained in the attached Report of Investigation. Please notify our office of any action resultant of this investigation within 90 days.

This investigation was based on a DOT-OIG project to identify DOT employees and contractor employees who may be using DOT computers and network resources to access and download child pornography (CP) from the Internet. During a review of Internet activity the OIG identified (b)(6), (b)(7)c computer as possibly accessing websites containing CP.

The possession, distribution, and/or receipt of child pornography constitutes a federal crime in violation of 18 USC § 2252 (Certain activities relating to material involving the sexual exploitation of minors) and/or 18 USC § 1466A (Obscene visual representations of the sexual abuse of children). This activity is also in violation of Standards of Ethical Conduct for Federal Employees codified under 5 C.F.R § 2635.704, Use of Government Property.

All DOT federal employees, contractors, and other personnel who are provided access to DOT information or to DOT information systems are required to acknowledge the DOT Rules of Behavior annually. This is done either through the DOT online training

management systems (TMS) for employees, or the DOT Security Awareness Training (SAT) application for its contractors. Section 4(d), Use of Government Office Equipment, DOT Order 1351.37, Departmental Cyber Security Compendium, Appendix E, DOT Rules of Behavior, specifically addresses the use of government equipment.

> *4. Use of Government Office Equipment, (d) I understand that the viewing of pornographic or other offensive or graphic content is strictly prohibited on DOT furnished equipment and networks, unless explicitly approved by Secretarial Office Head or Component Administrator in order to support official duties.*

Examination of (b)(6), (b)(7)c DOT laptop computer identified approximately 704 pornographic images depicting adult men and women performing various sexual acts and numerous Internet searches indicative of an individual looking for pornographic material. These images will be made available for review to assist your office in determining the appropriate action to take. The examination did not identify any CP.

During an interview, (b)(6), (b)(7)c admitted to searching for and viewing pornographic images that he described as "inappropriate" while at work and on his DOT-issued computer, stating that (b)(6), (b)(7)c spen imately 2-3 hours per week on the internet and possibly 1 hour per we ooking at sexually explicit material.

The DOT-OIG conducted a sample time analysis for the months of February through May 2012 and concluded (b)(6), (b)(7)c spent approximately 21 hours a month (avg. 42 min/day) actively searching out online content. By multiplying the value of approximately 21 hours/month by 12 months, the figure for time spent by (b)(6), (b)(7)c per year actively searching online content is approximately 252 hours/year (10.5 days). This calculation is based on a combination of the DOT-OIG's time analysis and (b)(6), (b)(7)c admissions during (b)(6), (b)(7)c interview with DOT-OIG agents. This calculation does not take into account how much time (b)(6), (b)(7)c may have spent actually viewing the online content.

This matter was referred to the United States Attorney's Office, but was declined for prosecution as there were no chargeable CP images. We are forwarding this matter to you for administrative resolution.

If you have any questions or we can be of further assistance, please do not hesitate to contact me. Alternatively you can call (b)(6), (b)(7)c Computer Crimes Agent, at (b)(6), (b)(7)c (b)(6), (b)(7)c

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Attachment (1)

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12E003CCU	DATE February 27, 2013	
TITLE (b)(6), (b)(7)c Federal Railroad Administration 1200 New Jersey Ave., SE, Washington, DC 20591	PREPARED BY SPECIAL AGENT / INVESTIGATOR SA (b)(6), (b)(7)c	STATUS Final	
	DISTRIBUTION JI-2 FRA	(b)(6), (b)(7)c	1/8
		APPROVED BY WLS	

SUMMARY:

This investigation was based on a project to identify U.S. Department of Transportation (DOT) employees and contractor employees who may be using DOT computers and network resources to access and download child pornography (CP) from the Internet. The Office of Inspector General (OIG) reviewed DOT Internet logs for terms relating to CP and identified an IP address assigned to (b)(6), (b)(7)c Federal Railroad Administration (FRA), DOT Headquarters, 1200 New Jersey Ave., SE, Washington, DC 20591, that was accessing the Internet and searching for terms indicative of CP.

DOT-OIG's examination of (b)(6), (b)(7)c DOT-issued laptop computer identified numerous pornographic images depicting adult men and women performing various sexual acts and numerous Internet searches indicative of an individual looking for pornographic material.

DOT-OIG monitored (b)(6), (b)(7)c DOT workstation for approximately three months, and the monitoring software recorded (b)(6), (b)(7)c online activities and captured screen shots of (b)(6), (b)(7)c desktop display at the time key words were typed into the web browser. The screen shots included searches for "busty actresses," "mature women sex," "sister and brother love," "mature women and young man," "busty teens," "busty asian women," and "sexy teens." A review of the output from the monitoring software determined that (b)(6), (b)(7)c was not intentionally seeking CP related material, but was intentionally seeking adult pornographic material.

~~FOR OFFICIAL USE ONLY~~

(Public availability to be determined under 5 U.S.C. 552)

IG F 1600.2 (5-86)

REDACTED FOR DISCLOSURE

During an interview with DOT-OIG agents, (b)(6), (b)(7)c admitted to searching for and viewing pornographic images that he described as "inappropriate" while at work and on his DOT-issued computer. A preview of (b)(6), (b)(7)c personally owned desktop computer did not reveal any relevant data.

The DOT-OIG conducted a sample time analysis for the months of February through May 2012 and concluded (b)(6), (b)(7)c spent approximately 21 hours a month (avg. 42 min/day) actively searching out online content. By multiplying the value of approximately 21 hours/month by 12 months, the figure for time spent by (b)(6), (b)(7)c per year actively searching online content is approximately 252 hours/year (10.5 days).

The DOT-OIG coordinated with a Department of Justice (DOJ) Trial Attorney with the District of Columbia on prosecutorial merit, and the United States Attorney's Office declined the case for prosecution as there were no chargeable CP images.

IDENTIFICATION:

The following is identifying information regarding the subject of investigation:

Name: (b)(6)

Home Address: (b)(6), (b)(7)c

Grade: (b)(6), (b)(7)c

Date of Birth: (b)(6), (b)(7)c

SSN: (b)(6), (b)(7)c

Current Title/Post of Duty: (b)(6), (b)(7)c
Federal Railroad Administration,
Department of Transportation Headquarters
1200 New Jersey Ave, SE
Washington, DC 20591

Criminal History: (b)(6), (b)(7)c

BACKGROUND:

In late January 2011, DOT-OIG initiated an investigation to identify DOT employees and contractors who may be using DOT computers and network resources to access and/or download CP from the Internet. DOT-OIG obtained access to Bluecoat[1] logs and analysis of the logs identified an IP address[2] assigned to (b)(6), (b)(7)c as being associated with the results indicative of an individual intentionally seeking CP. The computer name associated with the IP address was (b)(6), (b)(7)c (b)(6), (b)(7)c office. The IP address was assigned to (b)(6), (b)(7)c DOT-issued computer. DOT-OIG conducted an analysis of (b)(6), (b)(7)c DOT-issued computer and found Internet searches and image files that supported the results of the Bluecoat log analysis.

The possession, distribution, and/or receipt of child pornography constitutes a federal crime in violation of 18 USC § 2252 (Certain activities relating to material involving the sexual exploitation of minors) and/or 18 USC § 1466A (obscene visual representations of the sexual abuse of children). This activity is also in violation of Standards of Ethical Conduct for Federal Employees codified under 5 C.F.R § 2635.704, Use of Government Property.

All DOT federal employees, contractors, and other personnel who are provided access to DOT information or to DOT information systems are required to acknowledge the DOT Rules of Behavior annually. This is done either through the DOT online training management systems (TMS) for employees, or the DOT Security Awareness Training (SAT) application for its contractors. Section 4(d), Use of Government Office Equipment, DOT Order 1351.37, Departmental Cyber Security Compendium, Appendix E, DOT Rules of Behavior (Attachment 1), specifically addresses the use of government equipment.

> *4. Use of Government Office Equipment, (d) I understand that the viewing of pornographic or other offensive or graphic content is strictly prohibited on DOT furnished equipment and networks, unless explicitly approved by Secretarial Office Head or Component Administrator in order to support official duties.*

[1] A network device that maintains a log of websites visited by computers connected to the DOT network.

[2] A numerical label assigned to each device (e.g., computer, printer) participating in a computer network that uses the Internet Protocol for communication. Reference: http://en.wikipedia.org/wiki/IP_address

DETAILS:

Review of (b)(6), (b)(7)c *DOT-issued laptop computer*

DOT-OIG conducted a review of all allocated[3] images located on the hard drive (HDD) for evidence specific to the allegation. Review of allocated images did not identify any material of evidentiary value.

DOT-OIG next conducted analysis of the unallocated space[4], Hiberfil.sys[5] and Pagefile.sys[6] on the HDD. DOT-OIG carved out files with a JPG, AVI, BMP, PNG file header from unallocated space using Foremost[7]. Carving is a process of locating a deleted file, either in its entirety or through fragments, by searching for its unique file header[8] and following the data string. This data carve resulted in the identification of approximately 704 pornographic images depicting adult men and women performing various sexual acts. No other relevant data was found. See attached Forensic Media Analysis (FMA) report for further details. (Attachment 2)

DOT-OIG conducted a review of (b)(6), (b)(7)c Internet history to include a review of the Index.dat files included in (b)(6), (b)(7)c user profile. "The index.dat file is a database file. It is a repository of information such as web URLs, search queries and recently opened files. Its purpose is to enable quick access to data used by Internet Explorer. For example, every web address visited is stored in the index.dat file, allowing Internet Explorer to quickly find Autocomplete matches as the user types a web address. The index.dat file is user-specific and is open as long a user is logged on in Windows. Separate index.dat files exist for the Internet Explorer history, cache, and cookies."[9] Specifically, DOT-OIG performed a cursory review of some of the Index.dat

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[3] Allocated files are those files the file system sees as active, non-deleted files and currently referred to by the file system.

[4] Space on media that is not currently referred to by the file system. If this area has been previously used, and not "wiped," it will contain remnants from that prior use. Deleted files are one type of unallocated space.

[5] Source: http://www.forensicswiki.org/wiki/Hiberfil.sys
Hiberfil.sys is the file used by default by Microsoft Windows to save the machine's state as part of the hibernation process. The operating system also keeps an open file handle to this file, so no user, including the Administrator, can read the file while the system is running.

[6] Source: http://searchcio-midmarket.techtarget.com/sDefinition/0,,sid183_gci214300,00.html
In storage, a pagefile is a reserved portion of a hard disk that is used as an extension of random access memory (RAM) for data in RAM that hasn't been used recently. A pagefile can be read from the hard disk as one contiguous chunk of data and thus faster than re-reading data from many different original locations. Windows NT administrators or users can reset the system-provided default size value of the pagefile to meet their particular needs.

[7] Source: http://foremost.sourceforge.net/
Foremost is a console program to recover files based on their headers, footers, and internal data structures.

[8] A unit of information that precedes data. In file management, a header is a region at the beginning of the file that may contain information such as date created and size and type of file.

[9] http://en.wikipedia.org/wiki/Index.dat

files under (b)(6), (b)(7)c user profile which revealed that(b)(6), (b)(7)cused the InPrivate[10] browsing feature of Internet Explorer and searched for inappropriate material using Google and YouTube, for example:

- Busty mature ladies
- Boobs
- Busty+ (several)
- Boobs of facebook
- Myspace boobs
- Busty teens
- Hot young busty girls
- Women and girls
- Mature woman and young girl

Monitor of (b)(6), (b)(7)c *DOT-issued Computer*

On June 22, 2012, the DOT-OIG installed monitoring software on (b)(6), (b)(7)c DOT-issued computer to monitor and record his Internet activity. The monitoring software recorded (b)(6), (b)(7)c online activities and captured screen shots of (b)(6), (b)(7)c desktop display at the time key words were typed into the browser. The screen shots included searches for "busty actresses," "mature women sex," "sister and brother love," "mature women and young man," "busty teens," "busty asian women," and "sexy teens." Keystrokes recorded by the monitoring software included the following terms: (Attachment 3)(Attachment 4)

- *Busty teens highschool*
- *Hot florida teens*
- *Hot asian women*
- *Girls kissing women older*
- *Lexus james transgender sexy teens*
- *Mother and son sex*
- *Hot women of manassas, va*

All monitoring activities ceased as of August 17, 2012, and the monitoring software was removed on the same day. A review of the output from the monitoring software determined that(b)(6), (b)(7)cwas not intentionally seeking CP related material but was intentionally seeking adult pornographic material.

[10] InPrivate browsing is a term that Microsoft defines as enabling you to surf the web without leaving a trail in Internet Explorer. Microsoft further specifies that cookies and temporary internet files are stored in memory or on disk (respectively), but are cleared or deleted when the browser is closed. See http://windows.microsoft.com/en-US/windows-vista/What-is-InPrivate-Browsing for more information.

Sample Time Analysis

The DOT-OIG conducted a sample time analysis for the months of February through May 2012 to determine how much time (b)(6), (b)(7)c spent searching and viewing pornographic and other offensive material on the Internet while at work with DOT. (Attachment 5) DOT-OIG concluded (b)(6), (b)(7)c spent approximately 21 hours a month (avg. 42 min/day) actively searching out online content. By multiplying the value of approximately 21 hours/month by 12 months, the figure for time spent by (b)(6), (b)(7)c per year actively searching online content is approximately 252 hours/year (10.5 days). This calculation is based on a combination of the DOT-OIG's time analysis and (b)(6), (b)(7)c admissions during (b)(6), (b)(7)c interview with DOT-OIG agents. This calculation does not take into account how much time (b)(6), (b)(7)c may have spent actually viewing the online content.

DOJ referral

On December 10, 2012, DOT-OIG briefed USDOJ Trial Attorney (b)(6), (b)(7)c on the status of the case and results of the investigation. The Trial Attorney (b)(6), (b)(7)c declined the case for prosecution as there were no chargeable CP images found.

Interview of (b)(6), (b)(7)c *1/31/2013*

On January 31, 2013, DOT-OIG agents interviewed (b)(6), (b)(7)c (b)(6), (b)(7)c regarding allegations of possible criminal conduct which included searching for and accessing CP. During this interview, (b)(6), (b)(7)c admitted to using (b)(6), (b)(7)c DOT-issued laptop computer at work to search for sexually explicit material using Internet Explorer web browser, Google Images and YouTube.(Attachment 6) (b)(6), (b)(7)c consented to a search of (b)(6), (b)(7)c home personal desktop computer. No relevant data was found on the HDD.

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INDEX OF ATTACHMENTS

No.	DESCRIPTION
1.	DOT Employee Awareness Guide to Information Assurance and Technology Security
2.	(b)(6), (b)(7)c - Forensic Media Report, dated November 15, 2012
3.	(b)(6), (b)(7)c - Web Activity – SearchesSummary
4.	(b)(6), (b)(7)c - Keystrokes Detail Report Summary_Redacted
5.	(b)(6), (b)(7)c - Timeline Analysis, dated May 30, 2012 20120530
6.	Interview of (b)(6), (b)(7)c dated January 31, 2013

U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12E009SINV	DATE September 9, 2013
TITLE Alleged Federal Aviation Administration Employee	PREPARED BY: (b)(6), (b)(7)c Senior Special Agent Special Investigations, JI-3	STATUS Final
	DISTRIBUTION File JRI-4 Sunrise	APPROVED BY: RCE JI-3 (RCE/EVC)

REDACTED FOR DISCLOSURE

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ATTACHMENTS: (electronic)

Attachment 1: Single source rationale for ICX mobile sensor platforms

Attachment 2: ICX proposal to FAA for mobile sensor platforms

Attachment 3: (b)(6) ethics questionnaire for FLIR employment

Attachment 4: (b)(6), (b)(7)c trip report for meeting with ICX, et al.

Attachment 5: (b)(6), (b)(7)c application and resume

Attachment 6: Email to (b)(6), (b)(7)c about FLIR/ICX employee benefits

Attachment 7: FLIR employment offer accepted by (b)(6), (b)(7)c

Attachment 8: (b)(6) request to FAA Legal for ethics opinion

Attachment 9: FAA Legal ethics opinion for (b)(6), (b)(7)c

Attachment 10: (b)(6), (b)(7)c email to (b)(6), (b)(7)c on potential bad purchase

Attachment 11: (b)(6) and (b)(6), (b)(7)c interview MOA

BACKGROUND

This investigation was predicated on information DOT/OIG Florida criminal office (JRI-4) received during an on-going criminal investigation. FAA's Logistics Center leadership expressed a concern that (b)(6), (b)(7)c employment with FLIR, Inc. (FLIR) violated restrictions on former government employees. Under 41 U.S.C. § 423(d)(1), (b)(6), (b)(7)c would not be permitted to accept a post-retirement contract position with FLIR if (b)(6), (b)(7)c participated in any procurement action that may have resulted in the award of an FAA contract to FLIR. In addition, under 5 U.S.C. § 207(a)(1), if (b)(6), (b)(7)c participated in any FLIR procurement action during (b)(6), (b)(7)c FAA employment, (b)(6), (b)(7)c would be permanently prohibited from representing FLIR in contract-related matters before the FAA. Additionally, (b)(6), (b)(7)c may have misrepresented information to FAA Legal when (b)(6), (b)(7)c sought an ethics opinion regarding future employment with FLIR.

In February 2009, FAA entered into a five-year inter-agency agreement with U.S. Customs and Border Protection (CBP) to provide supply chain management services for CBP's Secure Border Initiative Network (SBIN). (b)(6), (b)(7)c coordinated FAA's efforts to support the SBIN. FAA's services included integrated logistics support for SBIN equipment, such as mobile surveillance systems (MSS) and border surveillance towers.

FLIR and ICX Technologies, Inc. (ICX) were two of the vendors used by FAA to acquire equipment needed to support the SBIN. FLIR and its affiliated companies are engaged in the development, production, sale, and service of sensor technology equipment. Their products include thermal imaging systems, perimeter intrusion systems, night vision devices, etc. ICX and its affiliated companies are similarly engaged in the development, sale, and service of sensor technology equipment. Their products include surveillance equipment, imaging and radar systems, mobile surveillance systems, and detection devices.

In August 2010, FLIR publically announced an agreement to acquire ICX and, in October 2010, FLIR publically announced the completion of the ICX acquisition for $268 million.

SYNOPSIS

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c April 2011 request to FAA Legal for an ethics opinion included information that (b)(6), (b)(7)c had contact with vendors of commercial off-the-shelf equipment acquired for CBP.

(b)(6), (b)(7)c request specifically stated that (b)(6), (b)(7)c was not involved with any federal agency procurement with FLIR. Based on the information provided by (b)(6), (b)(7)c FAA Legal advised that (b)(6), (b)(7)c was not prohibited from working at FLIR. (b)(6), (b)(7)c went to work for FLIR in May 2011.

This case was referred to and declined by the U.S. Attorney's Office (USAO) for the Western District of Oklahoma in Oklahoma City for criminal prosecution. (b)(5)

(b)(5), (b)(6), (b)(7)c

(b)(5)

DETAILS

Allegation 1: (b)(6), (b)(7)c post-FAA employment with FLIR violated employment restrictions on former government employees.

FINDINGS:

Under 41 U.S.C. § 423(d)(1), (b)(6), (b)(7)c was not be permitted to accept a post-retirement contract position with FLIR if (b)(6), (b)(7)c participated in any procurement action that may have resulted in the award of an FAA contract to FLIR. In addition, under 5 U.S.C. § 207(a)(1), if (b)(6), (b)(7)c participated in any FLIR procurement action during (b)(6), (b)(7)c FAA employment, (b)(6), (b)(7)c would be permanently prohibited from representing FLIR in contract-related matters before the FAA.

The investigation identified one instance where (b)(6), (b)(7)c while an FAA employee, appeared to be involved with the procurement of equipment from ICX. (b)(6), (b)(7)c was listed as the FAA point of contact on a single source rationale for the acquisition of two mobile sensor platforms from ICX in September 2010. **(Attachment 1)** The corresponding ICX proposal was signed by ICX (b)(6), (b)(7)c and listed (b)(6), (b)(7)c as one of two authorized ICX negotiators for the procurement. **(Attachment 2)**

A review of data files obtained from the government computer formerly assigned to (b)(6), (b)(7)c uncovered an April 2011 "ethics questionnaire" for applicants interested in employment with FLIR. (b)(6), (b)(7)c answer to question 3(b) indicated (b)(6), (b)(7)c initiated communication with (b)(6), (b)(7)c in March 2011 regarding possible employment with FLIR. **(Attachment 3)**

Other documents located in (b)(6), (b)(7)c data files revealed (b)(6), (b)(7)c met with (b)(6), (b)(7)c and other ICX representatives in March 2009 while TDY in Washington, D.C. (b)(6), (b)(7)c was briefed on ICX's participation in MSS development and ICX's interest in retrofitting the existing CBP MSS fleet to a single configuration. **(Attachment 4)** Also, (b)(6), (b)(7)c previously submitted a resume for an FAA vacancy where (b)(6), (b)(7)c indicated (b)(6), (b)(7)c personally directed all

logistics support efforts for FAA and external customers, including CBP. (**Attachment 5**)

FLIR completed its acquisition of ICX in October 2010. Documents located in (b)(6), (b)(7)c data files reflected the merger of FLIR and ICX occurred during (b)(6), (b)(7)c employment negotiations. For example, (b)(6), (b)(7)c received an email from FLIR's (b)(6), (b)(7)c with the subject line, "*FLIR Systems/ICX Technologies,*" regarding FLIR's benefits package. The email included an attachment with a quick guide to employee benefits with a document header of "*ICX Technologies.*" (**Attachment 6**) Another example was FLIR's employment offer to (b)(6), (b)(7)c In accepting the job offer, (b)(6), (b)(7)c submitted at-will employment and non-compete documents as a condition of employment with "*ICX Technologies,*" although the employment offer itself was on FLIR letterhead. (**Attachment 7**)

The USAO viewed the fact (b)(5)

(b)(5), (b)(6), (b)(7)c

(b)(5)

Allegation 2: (b)(6), (b)(7)c misrepresented information to an FAA attorney when (b)(6), (b)(7)c requested an ethics opinion about post-FAA employment with FLIR

FINDINGS:

(b)(6), (b)(7)c submitted a request for an ethics opinion to FAA Legal in April 2011. (**Attachment 8**) In the request (b)(6), (b)(7)c specified he had contact with vendors that supplied equipment supporting CBP; however, he specifically wrote:

> [A]t no time have (b)(6), (b)(7)c been personally involved in any pending federal agency procurement in which FLIR Systems, Inc. is or was an offer [sic] or bidder and furthermore, I have not had any involvement in any contract or other particular matter which may have had a direct and predictable effect on the financial interests of FLIR Systems, Inc.

(b)(6), (b)(7)c did not offer any information or details to FAA Legal about the business connection between FLIR and ICX. Based on the information supplied by (b)(6), (b)(7)c FAA Legal issued an opinion that he was not subject to post-employment restrictions that prevented (b)(6), (b)(7)c from working at FLIR. (**Attachment 9**)

The USAO indicated (b)(5)

(b)(5), (b)(6), (b)(7)c

(b)(5)

(b)(5)

ADDITIONAL INFORMATION

Leadership at the FAA's Logistics Center raised concerns that (b)(6), (b)(7)c maintained contact with (b)(6), (b)(7)c regarding procurement activities involving FLIR. For example, in one instance (b)(6), (b)(7)c emailed (b)(6), (b)(7)c to advise (b)(6), (b)(7)c about a potential "bad purchase" associated with a FLIR Ranger camera purchase. **(Attachment 10)**

(b)(6), (b)(7)c and an FAA procurement official were interviewed about (b)(6), (b)(7)c email. **(Attachment 11)** (b)(6), (b)(7)c advised it appeared to (b)(6), (b)(7)c was trying to let (b)(6), (b)(7)c know the intended purchase of the Ranger camera was likely not configured with the correct software to operate properly with CBP surveillance equipment. The procurement officer, (b)(6), (b)(7)c advised (b)(6), (b)(7)c recalled purchasing a camera from FLIR that had to be sent back because it had the incorrect software. This information corroborated the concern expressed in (b)(6), (b)(7)c email to (b)(6), (b)(7)c The fact that (b)(6), (b)(7)c informed FAA of a potential "bad purchase" also diminished the case's prosecutorial appeal.

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Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: Recommendation to Close OIG Investigation I12E012SINV

Date: September 11, 2013

From: (b)(6), (b)(7)c
ASAC (JI-3)

Reply to Attn of: X b)(6), (b)(7)c

To: Ronald Engler RCE
Director, Special Investigations (JI-3)

On March), (b 2012, (b)(6), (b)(7)c contacted the OIG Complaint Center Operations and alleged that (b)(6), (b)(7)c (b)(6), (b)(7)c officials were involved in misconduct.

(b)(6), (b)(7)c stated that (b)(6), (b)(7)c (b)(6), (b)(7)c and other senior officials used Facebook and their personal e-mail accounts to discuss government business. (b)(6), (b)(7)c also reported that b)(6), (b)(7)c had tampered with 6), (b)(2009 Employee Performance Appraisal by removing the overall "Outstanding" rating to "Exceeds Expectations," which caused (b)(6), (b)(7)c not to receive a 2009 performance award.

(b)(6), (b)(7)c was unable to provide any actionable leads regarding the allegation of inappropriate use of Facebook and personal e-mail for government business. However, interviews of (b)(6), (b)(7)c and a review of 3), (b) (b)(6), (b)(7)c confirmed that (b)(6), (b)(7)c was originally given an "Outstanding" rating on (6), (b)(2009 performance appraisal. (b)(6), (b)(7)c personnel file contained two performance appraisals for 2009, one of which appeared to have been altered though the use of white-out. (b)(6), (b)(7)c denied changing (b)(6), (b)(7)c performance appraisal, but acknowledged the appraisal appeared to have been altered.

We provided PHMSA (b)(6), (b)(7)c a copy of the altered appraisal and explained our findings. As a result, an agreement was reached between PHMSA and (b)(6), (b)(7)c to reinstate (b)(6), (b)(7)c "Outstanding" 2009 performance appraisal and give (6), (b)(7 the commensurate bonus. There are no additional investigative issues. Given the above, I recommend we close our investigation.

U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12E019SINV	DATE January 31, 2013
TITLE Alleged Conflict of Interest Regarding the Contract Awarded to Innovative Solutions International	PREPARED BY: (b)(6), (b)(7)c Senior Investigator Special Investigations, JI-3	STATUS Final
	DISTRIBUTION	APPROVED BY: JI-3 (RCE/EVC)

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BACKGROUND

On August 8, 2012, the U.S. Department of Transportation (DOT) Office of Inspector General (OIG), Complaint Center Operations received a referral from the Government Accountability Office (GAO) forwarding a private citizen's June (b)(6), (b)(7)c 2012, letter alleging violations of conflict of interest regulations regarding a contract awarded to Innovative Solutions International (ISI), and requesting an investigation into other concerns regarding the recent revision to FAA's Heliport Design Advisory Circular (AC) 150/5390-2B. The June 21, 2012, letter was submitted by (b)(6), (b)(7)c (b)(6), (b)(7)c on behalf of Heliport Safety Consortium (HSC) representatives who elected to remain anonymous. This ROI addresses the conflict of interest allegations. A separate ROI addresses the allegation regarding FAA's improper vetting of the AC.

HSC representatives allege that federal guidelines may not have been followed in the awarding of the ISI contract resulting in conflicts of interest. Specifically, they allege former FAA Airport (b)(6), (b)(7)c and (b)(6), (b)(7)c in violation of federal regulations 18 USC §§ 208 and 207, were engaged in or had direct oversight of the contract awarded to ISI and rewrite effort of the AC 150/5390-2B, and were subsequently employed by (b)(6), (b)(7)c to rewrite this same AC. HSC further questions whether the AC revision, which had been on-going for five to six years, was purposely delayed until (b)(6), (b)(7)c and (b)(6), (b)(7)c could work on it as contractors after their FAA retirement.

(b)(6), (b)(7)c and (b)(6), (b)(7)c retired from FAA on (b)(6), (b)(7)c Prior to their retirement, (b)(6), (b)(7)c and (b)(6), (b)(7)c (b)(6), (b)(7)c According to ISI contract invoices, both subjects began working for ISI in (b)(6), (b)(7)c

FAA awarded the contract to ISI on September 24, 2010, under its small business program. ISI was subsequently purchased by Pragmatics, Inc. Because Pragmatics is a large company, ISI no longer qualified as a small business and the work under the ISI contract was awarded to Joint Ventures Systems (JVS) (a veteran owned, small business) on April 12, 2012. Many of ISI employees, including (b)(6), (b)(7)c and (b)(6), (b)(7)c transferred to JVS.

Title 18 USC § 208 prohibits an employee from participating in an official capacity in particular matters in which he has a personal interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interest. Contracts are a particular matter involving specific parties under this statute. Title 4 CFR § 2635.604 provides:

> [E]mployee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment[.] ... An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

Title 18 USC § 207a provides restrictions on the post-employment of former government employees of the executive branch. Section 207(a)(1) provides that no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest. This is a lifetime restriction. Section 207(a)(2) provides that for two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his employment with the United States.

Key criteria in evaluating post-employment restrictions are: (1) did the former employee "switch sides" by representing another person on the same particular matter before the United States, and (2) did the particular matter involve a specific party or parties. Both of these criteria must be present to violate 18 USC § 207a. **See** OGE "Summary of Post-Employment Restrictions of 18 U.S.C. § 207," July 29, 2004.

Attachment 1 contains the methodology of our investigation.

SYNOPSIS

We found that (b)(6), (b)(7)c and (b)(6), (b)(7)c recused themselves from all procurement matters involving FAA's solicitation and eventual contract award to ISI. The subjects also disclosed to (b)(6), (b)(7)c they were seeking employment with any and all

government contractors. We found no evidence that the subjects inserted themselves into the procurement process to influence the award of the contract in violation of 18 USC § 208. We also found that because FAA ACs are recommended standards that apply to all of industry, ACs are a matter of general applicability, not a particular matter involving a specific party or parties. Therefore, any work (b)(6), (b)(7)c and (b)(6), (b)(7)c performed as ISI employees related to the revision of the AC did not violate 18 USC § 207.

We also found no evidence that the revision of AC 150/5390-2B was purposely delayed so (b)(6), (b)(7)c and (b)(6), (b)(7)c could work on it as contractors after their FAA retirement. The responsibility for the revision of the AC was transferred to another staff member, (b)(6), (b)(7)c within AAS-100 in early 2010 at about the same time that both (b)(6), (b)(7)c and (b)(6), (b)(7)c recused themselves from the procurement process and disclosed their intentions to seek post-employment with FAA contractors. This occurred almost one year before ISI employed the subjects on the FAA contract.

Below are the details of our investigation.

DETAILS

Allegation 1: In violation of 18 USC § 208, FAA Airport Engineering Division employees (b)(6), (b)(7)c and (b)(6), (b)(7)c were engaged in or had direct oversight of the contract awarded to Innovative Solutions International (ISI) and were subsequently employed by ISI.

FINDINGS:

We found that (b)(6), (b)(7)c and (b)(6), (b)(7)c recused themselves from the solicitation/contract award process prior to the solicitation for bids and found no other evidence that they inserted themselves into the procurement process to influence the award of the contract.

The solicitation for program support (to include revisions to ACs) for AAS-100 was issued competitively on August 10, 2010, through FAA's eFAST (Electronic FAA Accelerated and Simplified Tasks) process. eFAST is a multi-year Master Ordering Agreement Program offering a wide array of labor categories with fixed ceiling rates. It is the FAA's preferred acquisition vehicle for fulfilling FAA-wide Small Business Development Program Goals. Four bids were submitted and two qualified bids were forwarded to the contracting officer technical representative (COTR), (b)(6), (b)(7)c for review. The contract was awarded to ISI on September 24, 2010.

Recusals

(b)(6), (b)(7)c On September 9, 2010, (b)(6), (b)(7)c submitted a memorandum to (b)(6), (b)(7)c (b)(6), (b)(7)c (b)(6), (b)(7)c entitled, "Recusal as a Procurement Official." (b)(6), (b)(7)c disclosed (b)(6), (b)(7)c was considering retirement and pending retirement, considering employment with any and all contractors that may provide technical support to FAA. (b)(6), (b)(7)c disclosed (b)(6), (b)(7)c had discussed this with (b)(6), (b)(7)c in February/March 2010 and discussed, by telephone, ethics requirements related to post employment with (b)(6), (b)(7)c (FAA ethics officer). (b)(6), (b)(7)c also disclosed that early that year (b)(6), (b)(7)c recused (b)(6), (b)(7)c from participating in any actions related to a possible eFAST technical support contract. **(Attachment 2)**

(b)(6), (b)(7)c On July 19, 2010, (b)(6), (b)(7)c submitted a memorandum to (b)(6), (b)(7)c (b)(6), (b)(7)c entitled, "Recusal as a Procurement Official." (b)(6), (b)(7)c disclosed (b)(6), (b)(7)c was to following-up on a conversation (b)(6), (b)(7)c had with (b)(6), (b)(7)c in January 2010 regarding the fact that (b)(6), (b)(7)c was considering post employment with any and all contractors that may provide technical support to FAA. Pending selection of a contractor(s), (b)(6), (b)(7)c recused (b)(6), (b)(7)c from participation as a procurement official in any particular matter that would have an effect on those contractors. (b)(6), (b)(7)c disclosed (b)(6), (b)(7)c advised (b)(6), (b)(7)c staff not to bring such matters to (b)(6), (b)(7)c attention and referred them to (b)(6), (b)(7)c and, if they are ever uncertain, to seek the advice of an ethics official. **(Attachment 3)**

(b)(6), (b)(7)c wrote a second memorandum to (b)(6), (b)(7)c dated September 30, 2010, also entitled, "Recusal as a Procurement Official." In this memo, (b)(6), (b)(7)c was confirming a conversation from the same day regarding his eligibility to retire and his plan to contact ISI or its subcontractors regarding employment. (b)(6), (b)(7)c recused (b)(6), (b)(7)c from "personal and substantial participation in any particular matter" having direct impact on ISI or subcontractors. Again, (b)(6), (b)(7)c indicated that (b)(6), (b)(7)c had advised (b)(6), (b)(7)c staff that matters related to technical support contracts not be brought to (b)(6), (b)(7)c (b)(6), (b)(7)c attention and referred them to (b)(6), (b)(7)c and if they are ever uncertain, to seek the advice of an ethics official. **(Attachment 4)**

(b)(6), (b)(7)c told us the (b)(6), (b)(7)c subjects were not involved in the procurement process or writing the scope of work (SOW), and did not attend any meetings regarding the solicitation for program support for AAS-100. (b)(6), (b)(7)c subjects made it clear to (b)(6), (b)(7)c that (b)(6), (b)(7)c did not want to know what was going on with the procurement process.

Allegation 2: In violation of 18 USC § 207, (b)(6), (b)(7)c and (b)(6), (b)(7)c were engaged in or had direct oversight of the rewrite of Advisory Circular (AC) 150/5390-2B, and were subsequently employed by ISI to perform this same work.

FINDINGS:

According to (b)(6), (b)(7)c was responsible for revising/updating AC 150/5390-2B from about 2008 to early 2010, at which time (b)(6), (b)(7)c took over the responsibility for the AC. (The new revision is denoted as AC 150/5390-2C.) Therefore, (b)(6), (b)(7)c participated personally and substantially and (b)(6), (b)(7)c had official responsibility as the manager of AAS-100 for the revision of the AC. (b)(6), (b)(7)c also told us (b)(6), (b)(7)c consulted with (b)(6), (b)(7)c regarding this AC to obtain a history on the AC as to why certain changes were made. (b)(6), (b)(7)c made changes directly to the draft AC document, as directed by (b)(6), (b)(7)c Both (b)(6), (b)(7)c and (b)(6), (b)(7)c were also involved in the revision of other ACs.

Title 5 CFR § 2641.201, "Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially," states:

> (h) *Particular matter involving a specific party or parties*—
> (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a ''particular matter involving a specific party or parties.'' Although the statute defines ''particular matter'' broadly to include ''any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding,'' 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.
> (2) *Matters of general applicability not covered.* Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties[.]

The following example provided for paragraph (h)(2) is very similar to the (b)(6), (b)(7)c and (b)(6), (b)(7)c involvement with draft AC 150-5390-2B/C as it involves standards that are applicable to the entire aviation industry:

> A (b)(6), (b)(7)c of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation.

Based on our review of 5 CFR § 2641.201(h)(1) and (2), we concluded that because FAA ACs are recommended standards that apply to all of industry, ACs are a matter of general applicability, not a particular matter involving a specific party or parties. Therefore, (b)(6), (b)(7)c and (b)(6), (b)(7)c involvement in the revision of ACs in this particular matter are not prohibited by 18 USC § 207.

Allegation 3: The AC revision, which had been on-going for five to six years, was purposely delayed until (b)(6), (b)(7)c and (b)(6), (b)(7)c could work on it as contractors after their FAA retirement.

FINDINGS:

The HSC representatives based this allegation, in part, on their belief that the revision to the AC changed from a minor update to a complete rewrite that coincided with the subjects' retirements. In their June 21, 2012, letter they wrote:

> On March 7, 2011, the helicopter industry was informed at the Helicopter Association International's Hell-Expo, (b)(6), (b)(7)c (b)(6), (b)(7)c, that "the heliport advisory circular was not going to be a full rewrite but rather an update of the current advisory circular A/C 150/5390 2-B." Roughly two months later, in a letter to the industry posted on the FAA's web site from (b)(6), (b)(7)c dated May 23, 2011, it was indicated that a full rewrite had already been accomplished. ... Given the volume of work involved in creating this completely new advisory circular, "2C", to include many of the new graphics, the perception is that this significantly large volume of work may have started well prior to March 7, 2011, at which time (b)(6), (b)(7)c and (b)(6), (b)(7)c were still employed by the Federal Aviation Administration. If true, it is entirely possible that work presented by the ISI team may have already been accomplished and paid for by the FAA's airports division prior to ISI becoming involved. Hence, at least a portion of the new A/C may have been paid for twice over with federal tax dollars.

(b)(6), (b)(7)c confirmed that (b)(6), (b)(7)c did brief industry via webinar on the principle changes to AC 150/5390-2B/2C on March 7, 2011. However, (b)(6), (b)(7)c did not recall stating, as alleged by the

complainants, that the AC was going to be only an update and not a full rewrite. He only discussed the principle changes and would not have discussed every minor change.

We found no evidence that the revision of this AC was purposely delayed so (b)(6), (b)(7)c and (b)(6), (b)(7)c could then work on it as contractors after their retirement. The responsibility for the revision of the AC was transferred from (b)(6), (b)(7)c to (b)(6), (b)(7)c in early 2010 at about the same time that (b)(6), (b)(7)c and (b)(6), (b)(7)c recused themselves from the procurement process and disclosed their intentions to seek post-employment with FAA contractors. This was almost one year before ISI employed the subjects on the FAA contract in January 2011. (b)(6), (b)(7)c continued to work on revising the AC after this point. Any work subsequently made by (b)(6), (b)(7)c as an ISI employee was at the direction of (b)(6), (b)(7)c

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ATTACHMENT 1: METHODOLOGY OF INVESTIGATION

This investigation was conducted by a DOT OIG senior investigator. To address the complainants' conflict of interest concerns, we obtained and analyzed various documents and regulatory guidance including, recusal memorandums, ISI contract and SOW, ISI contract invoices, Office of Government Ethics guidance and conflict of interest cases, 18 USC §§ 207 and 208, and 5 CFR §§ 2635 and 2641. We also interviewed the following individuals:

- (b)(6), (b)(7)c, (b)(7)d
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c

U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12E019SINV	DATE February 12, 2012
TITLE Alleged Improper Vetting of Advisory Circular 150/5390-2C, Heliport Design, by the Federal Aviation Administration	PREPARED BY: (b)(6), (b)(7)c Senior Investigator Special Investigations, JI-3	STATUS Final
	DISTRIBUTION	APPROVED BY: JI-3 (RCE/EVC)

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BACKGROUND

On August 8, 2012, the U.S. Department of Transportation (DOT) Office of Inspector General (OIG), Complaint Center Operations received a referral from the Government Accountability Office (GAO) forwarding a private citizen's June 21, 2012, letter. That letter requests an investigation into a revision to FAA's Heliport Design Advisory Circular (AC) 150/5390-2C, as well as conflict of interest concerns involving former FAA employees. The June 21 letter was submitted by (b)(6), (b)(7)c of SmithAmundsen Aerospace, on behalf of Heliport Safety Consortium (HSC) representatives who elected to remain anonymous. This ROI addresses allegations regarding FAA's improper vetting of the AC contained in this letter. A separate ROI addresses the conflict of interest allegations.

HSC representatives allege that changes to Advisory Circular (AC) 150.5390-2, Heliport Design were unjustified and based on un-vetted and un-researched opinion, resulting in major and expensive changes to the industry. Specifically, in drafting the revised AC, FAA or contractor support representatives: (1) relied on input from the Heliport Association International (HAI) and failed to enlist a true cross section of qualified industry professionals; (2) did not the conduct the prerequisite benefit cost analysis; and (3) failed to perform meaningful, substantiated, and reproducible research in the design and writing of the new AC, resulting in major and expensive changes to the industry.

FAA Order 1320.46C, Advisory Circular System, sets forth procedures for preparing, processing and delivering ACs. It lists the significant responsibilities of FAA offices and establishes standards for format, writing, and clearance procedures. ACs provide guidance for industry, such as methods, procedures, and practices, acceptable to the FAA Administrator for complying with regulations and grant requirements. ACs may also contain explanations of regulations, other guidance material, best practices, or information useful to the aviation community. They do not create or change a regulatory requirement. For example, ACs may be needed to expand on standards needed to promote aviation safety, including the safe operation of airports.

Federal Aviation Regulations Part 152--Airport Aid Program, provides guidelines for projects that receive federal funds. Section 52.11(a) indicates that ACs are mandatory standards for Airport Aid Programs. The FAA Director, Office of Airport Standards, determines the scope and content of the technical standards to be included in each advisory circular and may add to, or delete from, any advisory circular or part thereof.

When FAA revises an AC, it assigns a letter to show the revision sequence. This complaint concerns the rewrite of the previous Heliport Design AC 150/5370-2B, issued

on September 30, 2004, which was replaced with AC 150/5370-2C on April 24, 2012. FAA's Office of Airport Safety & Standards -- (b)(6), (b)(7)c was responsible for updating this AC. (b)(6), (b)(7)c took over the responsibility for revising this AC in early 2010 and remained the primary focal point until it was issued in April 2012. AC 150/5390-2C is mandatory for development of both new and modified heliports that are funded with federal grant monies through the Airport Improvement Program (AIP) and/or from the Passenger Facility Charges (PFC).

Attachment 1 contains the methodology of our investigation.

SYNOPSIS

(b)(6), (b)(7)c confirmed that the initial drafting of the AC from about 2008 until May 2011 (when the formal draft was issued for public comment) was coordinated primarily with HAI. (b)(6), (b)(7)c told us that HAI, and in particular one individual within HAI, asserted that HAI represented the helicopter industry. However, when the formal draft was issued for comment in May 2011, other segments of the industry did have the opportunity to comment. Although FAA makes it a practice to do so, there is no legal requirement for FAA to solicit industry input.

Based on our review of Federal Aviation Regulation Part 152--Airport Aid Program, U.S. Office of Management and Budget (OMB) guidance, and FAA orders, and consultation with the FAA Office of Airports personnel (b)(6), (b)(7)c (b)(6), (b)(7)c we concluded there is no requirement that FAA perform a benefit cost analysis for changes to ACs.

We did not substantiate that FAA failed to performed adequate research in writing the new AC. FAA based the changes on international standards, FAA-sponsored studies, analysis of NTSB accident data, and input from industry prior to and after the formal draft was issued in May 2011. The complainants were concerned because even though the AC standards are not mandatory if no federal grant monies are used, in practice, they are mandatory because state authorities require operators to follow the AC. They pointed to one particular change that increases the size of the helipad for certain rooftop heliports indicating the changes will increase costs to industry and may limit the use of some existing heliports. Contrary to the complainants' belief, however, we found that as provided for in the AC, the new changes do not apply to existing heliports unless the operator makes major changes, such as increasing the size of the design helicopter that will use the heliport.

DETAILS

Allegation 1: FAA and contractor support representatives relied on input from the Helicopter Association International (HAI) and failed to enlist a true cross section of qualified industry professionals when drafting the AC.

FINDINGS:

(b)(6), (b)(7)c confirmed that the initial drafting of the AC from about 2008 until May 2011 (when the formal draft was issued for public comment), was coordinated primarily with HAI and FAA internal offices. (b)(6), (b)(7)c told us that HAI, and in particular one individual within HAI, asserted that HAI represented the helicopter industry. When the formal draft was issued for comment in May 2011, other segments of the industry did have the opportunity to comment. The draft AC was posted on FAA's website and notification was sent to all interested parties registered on the site, including over 6,000 non-media subscribers. In addition, FAA extended the comment period from August 31 to October 31, 2011, to accommodate industry requests for additional time and also met with industry representatives to discuss their concerns after the comment period closed. Although FAA Order 1320.46C, Advisory Circular System, states that FAA generally provides an opportunity for all or select segments of the public to comment on draft ACs, "there is no legal requirement to do so."

During their interviews, HSC representatives also alleged that FAA Airports personnel did not provide FAA Flight Standards Service personnel, who have the helicopter operational expertise, sufficient time to comment on the draft AC. We found three of FAA's Flight Standards Divisional offices and one regional office provided comments to AAS-100. One of these offices did not receive a copy of the draft until after the formal draft was issued. However, personnel from that office stated, in the end, they were provided ample time to review the draft AC. Flight Standards personnel indicated, although AAS-100 personnel did not accept all their recommended changes, they did address their main concern regarding the overuse of "must" and "shall." Flight Standards personnel indicated this was not appropriate because ACs are "advisory" only and not mandatory unless federal funds are used.

The HSC representatives also expressed concerns that the AC did not adequately consider the performance capabilities of helicopters in the design of heliports. In reviewing the comments provided to FAA on the draft AC, we noted that others had similar concerns. However, FAA Airport Engineer Division personnel indicated the design AC is not the appropriate mechanism to address helicopter operational capabilities or limitations. This needs to be addressed with FAA's Flight Standards office.

Allegation 2: FAA did not the conduct the prerequisite benefit cost analysis.

FINDINGS:

Based on our review of Federal Aviation Regulation Part 152--Airport Aid Program, OMB guidance, and FAA orders, and consultation with the FAA Office of Airports personnel (b)(6), (b)(7)c (b)(6), (b)(7)c we determined there is no requirement that FAA perform a benefit cost analysis for changes to ACs. Generally, benefit costs analyses are required when FAA makes new or significant changes to regulatory laws.

Allegation 3: FAA and contract support representatives failed to perform meaningful, substantiated and reproducible research in the design and writing of the new AC, resulting in major and expensive changes to the industry.

FINDINGS:

We did not substantiate that FAA failed to performed adequate research in writing the new AC. FAA based the changes on international standards, FAA-sponsored studies, analysis of NTSB accident data, and input from industry prior to and after the formal draft was issued in May 2011.

During their interviews, HSC representatives explained that many state aviation authorities require operators to comply with this AC when constructing heliports; therefore, the standards in the AC are, in practice, mandatory - even though on a federal level they are voluntary if no federal funds are used. They allege new standards in the AC will increase costs without an improved safety benefit and will limit the use of some existing Heliports.

When asked for a specific example of such a new standard, the HSC representatives cited a new requirement that affects many hospital rooftop heliports. The new standards in AC 150/5390-2C increased the required size of the touchdown and liftoff area (TLOF) (i.e., helipad) for those heliports where the final approach and takeoff area (FATO) outside the TLOF is non-load bearing. The previous version of the AC (150/5390-2B) required TLOF dimension (length, width or diameter) to be a minimum of 40 feet or equal to the helicopter rotor diameter (RD) of the largest helicopter that would use the heliport. The new AC (150/5390-2C) increased the size of the TLOF to the overall length (D) of the helicopter including rotor diameter. The HSC representatives indicated the new standard will increase the size of the TLOF by 30 percent and correspondingly increases the costs. They allege that FAA cannot support this change with a scientific study that would show a larger TLOF would increase the safety margin enough to justify the increased costs.

The HSC representatives also indicated that with new standard, the size of the helicopter that can land at specific rooftop heliports will decrease. Many hospitals rooftop TLOFs cannot be increased because of the structure of the building/hospital. As a result, some helicopters may no longer be used to transport patients to a particular hospital, even though the TLOFs at that hospital were originally designed for that helicopter. The HSC representatives further explained that unlike the prior AC (-2B), the new AC (-2C) has no grandfather clause allowing existing heliports to continue to meet those standards in existence at the time it was constructed.

Support for the Increased TLOF size

(b)(6), (b)(7)c told us that FAA's recommended increase from RD to D is based on review of NTSB accident data from 1980 to the AC revision date. Their review of the NTSB data, although not formally documented, found that many accidents occurred due to loss of control after the main or tail rotor strikes an object. Loss of control could also occur due to a sudden wind gusts or shifts in wind direction. If similar incidents were to occur over or near the TLOF area, the larger TLOF increases the safety margin by increasing the weight bearing area in which the helicopter can land because there is no load-bearing FATO to compensate. The increased safety margin will reduce injuries/fatalities and potential aircraft damage due to rollovers. FAA's primary mission is safety, so it established standards for Heliport Design to be as safe as possible. Our review of a sampling of these accidents confirmed similar accidents as described by (b)(6), (b)(7)c

We also compared FAA's standards to international standards and recommended practices issued by the International Civil Aviation Organization (ICAO), in Annex 14, Volume II, Heliports. We found that the ICAO's guidance for elevated heliports contained in Section 3.2 of Annex 14, Volume II, Heliports, either requires ("shall") or recommends ("should") that the TLOF be equal to the overall length of the helicopter (D). The ICAO guidance distinguishes between standards and recommended practices. It describes "standards" as "any specification … for which the uniform application is recognize as necessary for the safety or regularity … and to which Contracting States will (shall) conform." It describes "recommended practices" as "any specification … for which the uniform application is recognized as desirable in the interest of safety … to which Contracting States will endeavor to ("should") conform."

Section 3.2 notes that for elevated heliports it is assumed that the FATO and one TLOF will be coincidental (one in the same), that the TLOF shall be the same size as the FATO, and that the FATO shall be dynamic load bearing. It specifies the standard and

recommended practices for the dimensions for the FATO (TLOF) based on helicopter operational performance class as follows:

> 3.2.4. The dimensions of the FATO shall be:
>
> a) where intended to be used by helicopters operated in performance class 1, as prescribed by the helicopter flight manual (HFM) except that, in absence of width specifications, the width shall be not be less than 1 D of the largest helicopter the FATO intended to serve;
>
> b) where intended to be used by helicopters operated in performance class 2 or 3, of sufficient size and shape to contain an area within which can be drawn a circle of diameter not less than:
>
> 1)1 D of the largest helicopters when the MTOM [maximum take-off mass (i.e., weight)] of the helicopters the FATO is intended to serve is more than 3 175 kg [7,000 pounds],
>
> 2) 0.83 D of the largest helicopters when the MTOM [maximum take-off mass (i.e., weight)] of the helicopters the FATO is intended to serve is 3 175 kg [7,000 pounds] or less. [0.83 D is equivalent to RD]
>
> 3.2.5. Recommendation—*Where intended to be used by helicopters operated in performance class 2 or 3 with MTOM* [maximum take-off mass (i.e., weight)] *of 3 175 kg* [7,000 pounds] *or less, the FATO should be of sufficient size and shape to contain an area within which can be drawn a circle of diameter of not less than 1 D.*

Concerns regarding the lack of a grandfather clause for existing heliports.

The HSC representatives indicated that even though the advisory is not mandatory unless federal funds are used, many state authorities require its use, therefore, in practice, it is mandatory. Complicating the matter, the new AC (-2C) eliminated a grandfather clause allowing operators of existing heliports to continue to follow standards applicable at the time of design.

The prior AC (-2B) under paragraph 400b contained the following note regarding existing hospital heliports:

> **NOTE:** *To the extent that it is feasible and practical to do so, the standards and recommendations in this AC should be used in planning and designing improvements to an existing heliport when significant expansion or*

> *reconstruction is undertaken. Furthermore, existing hospital heliport may continue to follow the recommendations and standards applicable at the time of design.*

The new AC (-2C) contains the following requirements for existing heliports, which HSC representatives view as more restrictive:

> **105. Existing heliports.** When a change to an existing heliport requires the submission of FAA Form 7460-1, Notice of Proposed Construction or Alteration, or FAA Form 7480-1, Notice of Landing Area Proposal, bring the heliport up to current standards. It may not, however, be feasible to meet all current standards at existing heliports. In those cases, consult with the appropriate offices of the FAA Office of Airports and Flight Standards Service to identify any adjustments to operational procedures necessary to accommodate operations to the maximum extent.

(b)(6), (b)(7)indicated that the AC 150/5390-2C is mandatory for development of both new and modified heliports that are funded with federal grant monies through the Airport Improvement Program (AIP) and/or from the Passenger Facility Charges (PFC). (b)(6), (b)(7)c explained that, for example, if an operator of a rooftop heliport is only adding lights or markings, the operator would not have to increase the size of the TLOF to meet the new size requirements for TLOFs without a load bearing FATO. If this same operator wants to utilize a larger helicopter type for which the TLOF was originally designed, then it would be required to comply with the new standards in the AC. However, as provided for in paragraph 105 of the AC, if it is not feasible to meet all current standards at an existing heliport, the operator can consult with FAA to identify any adjustments to operational procedures. Assuming the state or local authorities do require the operator to follow the AC, operators need to work with local and state authorities to determine when and if the facility must be upgraded to current standards.

Based on(b)(6), (b)(7)cstatement above and paragraph 105 of the AC, we concluded that this change will not have an impact to industry unless the operator of rooftop heliport increases the size of the heliport's design helicopter or the state or local authorities require it.

Further, our review of helicopter data found that the impact of the application of this new standard compared to previous requirements would result in an increase in the TLOF size of 16 percent, not 30 percent as alleged by the HSC representatives. We reviewed helicopter data for 70 helicopter types to determine how the change in the TLOF size might affect the helicopter landing on a hospital rooftop helipad that did not have a load

bearing FATO. For 23 helicopter types, no change in the TLOF size would be required because the overall length (D) of these helicopters is 40 feet or less and rooftop hospital TLOFs are required to be a minimum of 40 feet. For remaining 47 helicopter types, we calculated the difference between the rotor diameter (RD) (or 40 feet if the RD was less than 40 feet) and the overall length of the helicopter (D) to determine how much larger the TLOF would need to be under the new standards in AC (2C) versus the old AC (-2B). We determined that to meet the new guidelines in FAA AC, the TLOF size would increase an average of 16 percent.

ATTACHMENT 1: METHODOLOGY OF INVESTIGATION

This investigation was conducted by a DOT OIG senior investigator. To address the complainants' concerns, we obtained and analyzed various documents and regulatory guidance including, Federal Aviation Regulations, OMB guidance, FAA orders, NTSB accident data, and industry comments and letters regarding the AC 150/5390-2C. We also interviewed or contacted via email the following individuals:

- (b)(6), (b)(7)c and two anonymous HSC representatives, Complainants
- (b)(6), (b)(7)c
- (b)(6), (b)(7)c Office of Airport Safety and Standards (AAS-1)
- (b)(6), (b)(7)c Airport Engineering Division (AAS-100)
- (b)(6), (b)(7)c Flight Procedures Standards Branch (AFS-420)
- (b)(6), (b)(7)c Flight Procedure Implementation & Oversight Branch (AFS-460)
- (b)(6), (b)(7)c - Flight Procedure Implementation & Oversight Branch (AFS-460)
- (b)(6), (b)(7)c Commuter, On Demand, and Training Center Branch, Flight Standards/Air Transportation Division (AFS-250)
- (b)(6), (b)(7)c Commercial Operations (AFS-820)

U.S. Department of Transportation
Office of the Secretary of Transportation

Office of Inspector General
Washington, DC 20590

September 12, 2013

(b)(6), (b)(7)c

Re: OIG File No. I12E022SINV

Dear (b)(6), (b)(7)c

This letter is in response to your July 19, 2012, complaint to the U.S. Department of Transportation Office of Inspector General (OIG) Complaint Center Operations. As explained more fully below, other federal agencies have addressed your allegations, and we will take no further action. Consequently, we have closed our file in this matter.

Allegations

You allege that (b)(6), (b)(7)c (b)(6), (b)(7)c (b)(6), (b)(7)c (1) violated time and attendance policies by falsifying timesheets for one of (b)(6), (b)(7)c employees and pressuring (b)(6), (b)(7)c to do the same; (2) abused the agency telework policy; and (3) colluded with (b)(6) (b)(6), (b)(7)c to have Maritime Administration (MARAD) staff – with whom (b)(6), (b)(7)c has a personal relationship – conduct a biased investigation into (b)(6), (b)(7)c conduct. Further, (b)(6), (b)(7)c allege that in reprisal for disclosing (b)(6), (b)(7)c alleged time and attendance and telework violations, (b)(6), (b)(7)c removed some of your job functions and (b)(9) reassigned you to a non-supervisory position.

Summary of Findings

An Outside Agency Has Previously and Sufficiently Investigated Your Time and Attendance and Telework Allegations.

(b)(6), (b)(7)c stated that in June 2011, you disclosed to (b)(6), (b)(7)c that (b)(6), (b)(7)c asked you to approve falsified timesheets. Later, in September 2011, you

contend you repeated the allegation to (b)(6), (b)(7)c and an Alternative Dispute Resolution counselor. On June 15, 2012, (b)(6), (b)(7)c sent an email to (b)(6), (b)(7)c again alleging (b)(6), (b)(7)c asked you to approve "false" timesheets. In July 2012, (b)(6), (b)(7)c asked MARAD (b)(6), (b)(7)c to investigate, among other things, whether (b)(6), (b)(7)c falsified time and attendance records and created a hostile work environment for (b)(6), (b)(7)c (At the request of (b)(6), (b)(7)c also looked into whether you acted inappropriately toward your staff.) (b)(6), (b)(7)c issued (b)(6), (b)(7)c Report of Investigation on September 14, 2012.

(b)(6), (b)(7)c analyzed (b)(6) report, as well as additional documents provided by you and PHMSA staff. The evidence indicates (b)(6), (b)(7)c investigation was sufficient and responsive to your time and attendance allegation, which (b)(6), (b)(7)c partially substantiated. For example, (b)(6), (b)(7)c 28-page report contains summaries of the 11 PHMSA employees (b)(6), (b)(7)c interviewed – including you, and the employee who allegedly falsified timesheets – and a summary of her findings. attached to (b)(6), (b)(7)c report an additional 254 pages containing 73 exhibits, including numerous emails and other documents (b)(6), (b)(7)c reviewed.

Further, despite your allegation that (b)(6) investigation was biased against (b)(6), (b)(7)c because of a personal relationship between (b)(6), (b)(7)c you provided no evidence supporting this allegation. Moreover, the record does not indicate insufficiency or bias in (b)(6) investigation. As stated above, (b)(6), (b)(7)c interviewed numerous PHMSA employees, produced an investigative document totaling more than 250 pages, and partially substantiated your time and attendance allegation.

(b)(6), (b)(7)c also found that (b)(6), (b)(7)c obtained additional information, including turnstile records, concerning your time and attendance and telework allegations. Although (b)(6), (b)(7)c cannot disclose what, if any, action (b)(6), (b)(7)c took because of those allegations, (b)(6), (b)(7)c issued memoranda on November 7, 2012, that addressed both matters.

In sum, the evidence indicates that (b)(6), (b)(7)c neither of whom was the subject of your time and attendance and telework allegations, have already investigated those allegations and that (b)(6), (b)(7)c responded to the investigative findings within the scope of (b)(6), (b)(7)c authority. Consequently, we will not reinvestigate the alleged time and attendance and telework violations or take further action concerning (b)(6), (b)(7)c investigation.

Your Reprisal for Whistleblowing Allegation Has Been Addressed By the U.S. Office of Special Counsel.

You allege that, in retaliation for your disclosures of (b)(6), (b)(7)c alleged time and attendance and telework violations – including a June 28, 2012, complaint to the PHMSA

Office of Civil Rights – (b)(6), (b)(7)c removed some of your job functions in July 2012 and (b)(6) reassigned you to a non-supervisory position in November 2012.

On September 9, 2012, you submitted a reprisal for whistleblowing complaint to the U.S. Office of Special Counsel (OSC). In a letter dated March 26, 2013, an OSC attorney advised you of OSC's preliminary determination to close its inquiry into your allegation of retaliation. Your then-attorney submitted a written response dated April 5, 2013, asking OSC to change its preliminary determination. In (b)(6), (b)(7)c response, (b)(6), (b)(7)c specifically mentioned (b)(6), (b)(7)c alleged retaliatory personnel actions against you. Nevertheless, OSC responded in an April 23, 2013, letter stating it would not reconsider its preliminary determination and would close its file. The letter also advised you of your right to file an Individual Right of Action seeking corrective action for the alleged retaliation with the U.S. Merit Systems Protection Board (MSPB), and you have exercised that right.

Consequently, we will take no further action concerning the retaliatory personnel actions you allege because they have already been addressed by OSC, which specializes in reprisal for whistleblowing cases. (Unlike OIG, OSC has the authority to negotiate corrective and/or disciplinary action for whistleblower reprisal with federal agencies and can seek such action before the MSPB.) Further, your whistleblower allegation is currently an open matter before the MSPB, which has the authority to order PHMSA to take corrective action.[1]

If you have any questions, please contact me at (b)(6), (b)(7)c . Thank you for providing us the opportunity to look into this matter.

Sincerely,

Ronald C. Engler

Ronald C. Engler
Director, Special Investigations

[1] Your reassignment has been additionally addressed through the agency grievance procedure. In response to (b)(6), (b)(7)c November 7, 2012, Notice of Reassignment, you grieved the decision to (b)(6), (b)(7)c on November 20, 2012. In a December 3, 2012, memorandum (b)(6), (b)(7)c reaffirmed (b)(6), (b)(7)c original decision. You submitted the final step grievance requesting a reconsideration of (b)(6), (b)(7)c decision on December 10, 2012. PHMSA (b)(6), (b)(7)c reaffirmed (b)(6), (b)(7)c decision in a July 12, 2013, memorandum.

U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12G003SINV	DATE August 27, 2012
TITLE Alleged Whistleblower Reprisal at Washington Metropolitan Area Transit Authority	PREPARED BY: (b)(6), (b)(7)c Investigator Special Investigations, JI-3	STATUS Final
	DISTRIBUTION S-1, C-1	APPROVED BY: JI-3 (RCE/EVC)

REDACTED FOR DISCLOSURE

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BACKGROUND

On February 17, 2012, the U.S. Department of Transportation (DOT) Office of Inspector General (OIG) received an email from attorney (b)(6), (b)(7)c on behalf of his client, (b)(6), (b)(7)c alleging reprisal for whistleblowing in violation of Section 1553 of the American Recovery and Reinvestment Act of 2009 (ARRA). Pub. L. No. 111-5, § 1553, 123 Stat. 115, 297 (2009). (b)(6), (b)(7)c alleges (b)(6), (b)(7)c was terminated on August 31, 2011, for ARRA-related disclosures made between September 2010 and August 2011. (b)(6), (b)(7)c disclosures concerned the implementation of an Integrated Financial Organization (IFO) computer software upgrade that WMATA contracted to a company called Metaformers.

WMATA received $184 million in ARRA grants from the Federal Transit Administration on July 31, 2009, and used approximately $5 million of the grant money to fund, in part, a $13.5 million contract with Metaformers to perform work on the IFO software upgrade. WMATA sought the upgrade to integrate and automate several support functions, including human resources, payroll, accounting, procurement, and asset management. WMATA hired (b)(6), (b)(7)c in September 2010 as an at-will employee to serve as the technical lead overseeing the IFO project.

Under ARRA § 1553(a), an employee of a non-federal employer that receives ARRA funds may not be discharged or otherwise discriminated against in reprisal for making a protected disclosure to, among others, someone with supervisory authority over the employee or who has the authority to investigate, discover, or terminate misconduct. A disclosure is protected if the employee reasonably believes it contained evidence of: (1) gross mismanagement of an ARRA contract or grant; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the use of ARRA funds; (4) an abuse of authority related to the use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency ARRA contract or grant.

Reprisal in violation of Section 1553 is affirmatively established if (b)(6), (b)(7)c demonstrates (b)(6), (b)(7)c protected disclosures were a "contributing factor" in his discharge. ARRA § 1553(c)(1)(A)(i). Under Section 1553(c)(1)(A)(ii), a contributing factor may be demonstrated by circumstantial evidence, including evidence that (b)(6), (b)(7)c the alleged retaliating official, knew of (b)(6), (b)(7)c disclosure or the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude the disclosure was a contributing factor in the reprisal. The Secretary of Transportation, however, may find there was no reprisal if WMATA can demonstrate by clear and convincing evidence that it would have terminated (b)(6), (b)(7)c notwithstanding his disclosures. ARRA § 1553(c)(1)(B).

No later than 30 days after receiving this report, the Secretary shall determine whether there is sufficient basis to conclude WMATA terminated (b)(6), (b)(7)c in reprisal for whistleblowing and issue an order denying relief in whole or in part or providing (b)(6), (b)(7)c with corrective action. ARRA § 1553(c)(2). Potential corrective actions include reinstatement with compensatory damages and the reimbursement of all costs associated with (b)(6), (b)(7)c complaint to DOT OIG. ARRA § 1553(c)(2).

Attachment 1 contains the methodology of our investigation.

SYNOPSIS

We found that (b)(6), (b)(7)cmade seven ARRA-related disclosures between September 2010 and August 2011. Four of the disclosures were protected under ARRA, and (b)(6), (b)(7)c knew of at least three of them. Moreover, (b)(6), (b)(7)c terminated (b)(6), (b)(7)con Augus(b)(6), (b)(7)c 2011, approximately 11 months after his first protected disclosure and within a week after his last.

We also found that in June and August 2011 (b)(6), (b)(7)c proposed to terminate(b)(6), (b)(7)cfor alleged performance and time and attendance issues. WMATA human resources officials, however, refused to support his termination because (b)(6), (b)(7)c did not document the alleged performance and time and attendance issues or counsel (b)(6), (b)(7)c about them and failed, as required under WMATA policy, to establish performance standards for (b)(6), (b)(7)c Ultimately, (b)(6), (b)(7)c terminated (b)(6), (b)(7)c at-will employment in August 2011 without identifying a cause. The termination, however, did not comply with WMATA policy because (b)(6), (b)(7)c also failed to notify the WMATA general manager and receive approval for the termination.

In sum, the weight of evidence indicates that (b)(6), (b)(7)c protected disclosures were a contributing factor in (b)(6), (b)(7)c termination and that WMATA cannot show by clear and convincing evidence it would have terminated (b)(6), (b)(7)c notwithstanding his disclosures.

Below are the details of our investigation.

DETAILS

Disclosure 1: In September or October 2010, (b)(6), (b)(7)c told (b)(6), (b)(7)c that WMATA paid (b)(6), (b)(7)c for an assessment of the IFO project that erroneously concluded an EPM upgrade was unnecessary.

FINDINGS:

In September or October 2010, in (b)(6), (b)(7)c office, (b)(6), (b)(7)c disclosed to (b)(6), (b)(7)c concerns regarding the adequacy of an IFO project assessment (b)(6), (b)(7)c conducted earlier in the year. Specifically (b)(6), (b)(7)c voiced (b)(6), (b)(7)c disagreement with a conclusion in the assessment that an upgrade to the Enterprise Performance Management (EPM) component of IFO was unnecessary and told (b)(6), (b)(7)c that failing to include the EPM upgrade would result in delays and cost overruns. We found that WMATA paid approximately $256,800 for the assessment. **(Attachment 2)** (b)(6), (b)(7)c informed us that (b)(6), (b)(7)c concerns with the assessment stemmed from (b)(6), (b)(7)c years of experience in the technical software field, experience with a similar project at another job, and (b)(6), (b)(7)c daily oversight of the IFO project and the performance of Metaformers and other contractors.

(b)(6), (b)(7)c acknowledged to us that during September and October 2010, (b)(6), (b)(7)c criticized Metaformers's 2010 assessment. (b)(6), (b)(7)c denied, however, (b)(6), (b)(7)c claimed at that time that the EPM component needed an upgrade. Instead, (b)(6), (b)(7)c contended that, in November or December 2010, the EPM software vendor first informed WMATA of the need to upgrade the EPM. In meeting minutes dated October 7, 2010, however, we found the IFO project technical team led by (b)(6), (b)(7)c spoke of the need for the EPM upgrade. **(Attachment 3)** (b)(6), (b)(7)c did not attend the meeting, but saw the minutes.

(b)(6), (b)(7)c also stated that (b)(6), (b)(7)c replied to (b)(6), (b)(7)c criticism of Metaformers's assessment by telling (b)(6), (b)(7)c that his role was to implement the project plan, not alter or criticize it. According to (b)(6), (b)(7)c concern proved accurate, and (b)(6), (b)(7)c acknowledged to us that WMATA officials, including (b)(6), (b)(7)c ultimately determined the EPM upgrade from version 9.0 to 9.1 was necessary. (b)(6), (b)(7)c also acknowledged that the upgrade required (b)(6), (b)(7)c to modify the contract with Metaformers and increased the IFO project cost.

WMATA paid $174,146 to an (b)(6), (b)(7)c who worked with WMATA staff to complete the EPM upgrade. **(Attachment 4)** Additionally, WMATA paid Metaformers $53,597 to create an interface between the PeopleSoft component of IFO and the upgraded EPM version 9.1. **(Attachment 5)**

As stated above, (b)(6), (b)(7)c disclosure is protected under ARRA if (b)(6), (b)(7)c reasonably believed, at the time of the disclosure, (b)(6), (b)(7)c was disclosing one of the five circumstances provided in the statute. Concerning gross mismanagement, courts have held under the Whistleblower

Protection Act of 1989 (WPA), 5 U.S.C. § 2302, that it "does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing. There must be an element of blatancy. Gross mismanagement means a management action or inaction that creates a substantial risk of significant adverse impact on the agency's ability to accomplish its mission." *Embree v. Department of the Treasury*, 70 M.S.P.R. 79, 85 (1996).

According to (b)(6), (b)(7)c believed Metaformers's assessment was seriously flawed because it deemed unnecessary the upgrade of a key component of the IFO project. (b)(6) also believed that following Metaformers's assessment would result in delays to the launch of a functioning, updated IFO and cost overruns. Given (b)(6), (b)(7)c technical knowledge, (b)(6), (b)(7)c experience with this software on a similar job and (b)(6), (b)(7)c responsibility for this project, it appears (b)(6), (b)(7)c belief was reasonable. This conclusion is also supported by (b)(6), (b)(7)c determination that the upgrade was necessary to successfully accomplish the IFO implementation.

Under the WPA, Courts have also held that a gross waste of funds is a "more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government." *Smith v. Department of the Army*, 80 M.S.P.R. 311, 315 (1998). A gross waste of funds can, for example, amount to as little as $2,000 for travel for training that was available locally. *See Special Counsel v. Spears*, 75 M.S.P.R. 639, 658-660 (1997).

In this matter, (b)(6), (b)(7)c believed that the $256,800 MWATA paid for Metaformers's assessment was wasteful because it erroneously concluded the upgrade of an essential component of the IFO system was unnecessary. (b)(6), (b)(7)c also believed that this omission would result in additional costs to address the failure to perform the upgrade. Again, given (b)(6), (b)(7)c experience and the fact that ultimately (b)(6), (b)(7)c was proven correct, the evidence indicates (b)(6), (b)(7)c belief was reasonable.

In sum, the evidence indicates this disclosure was protected because it appears (b)(6), (b)(7)c had a reasonable belief (b)(6), (b)(7)c was disclosing evidence of gross mismanagement and a gross waste of funds related to the ARRA-funded EPM upgrade and (b)(6), (b)(7)c made the disclosure to (b)(6), (b)(7)c someone with supervisory authority (b)(6) Additionally, because (b)(6), (b)(7)c acknowledged (b)(6), (b)(7)c told (b)(6), (b)(7)c in September or October 2010 about (b)(6) criticisms of the assessment and (b)(6), (b)(7)c was aware of the October 2010 meeting minutes, there is sufficient evidence to demonstrate (b)(6), (b)(7)c had knowledge of this disclosure.

(b)(6), (b)(7)c terminated (b)(6), (b)(7)c approximately 11 months after (b)(6), (b)(7)c made this disclosure to (b)(6)

Disclosure 2: In October or November 2010, (b)(6), (b)(7)c raised (b)(6), (b)(7)c concern about the EPM upgrade with (b)(6), (b)(7)c and senior WMATA officials.

FINDINGS:

During an executive steering committee meeting in October or November 2010 with (b)(6), (b)(7)c and several senior WMATA officials, including (b)(6), (b)(7)c (b)(6), (b)(7)c again raised (b)(6), (b)(7)c concern with Metaformers's conclusion that the EPM upgrade was unnecessary.

During the meeting, (b)(6), (b)(7)c explained that the EPM upgrade would be completed by April 2011. (b)(6), (b)(7)c however, stated the upgrade would not be ready until August 2011. According to (b)(6), (b)(7)c spoke with (b)(6), (b)(7)c privately immediately after the meeting. (b)(6), (b)(7)c said that during their conversation, (b)(6), (b)(7)c told (b)(6), (b)(7)c "[y]ou put me under the bus" and told (b)(6), (b)(7)c not to attend future executive steering committee meetings. **(Attachment 6, p. 23, line 570)**

(b)(6), (b)(7)c told us that (b)(6), (b)(7)c embarrassed (b)(6) in front of the officials present at the meeting (b)(6), (b)(7)c told (b)(6), (b)(7)c open (b)(6), (b)(7)c mouth and says, 'Oh no, we can't be ready before August. This is not going to happen before August.'" **(Attachment 7, p. 41, lines 1002-1004)** (b)(6), (b)(7)c added, (b)(6), (b)(7)c completely undermined what I was saying during the meeting, in front of (b)(6), (b)(7)c and (b)(6), (b)(7)c had no business doing that because (b)(6), (b)(7)c was wrong." **(Attachment 7, pp. 41-42, lines 1004-1005, 1026-1027)** (b)(6), (b)(7)c also acknowledged telling (b)(6), (b)(7)c after the meeting, "You threw me under the bus," and disinviting (b)(6), (b)(7)c from future executive steering committee meetings. **(Attachment 7, pp. 41-42, lines 1022-1031)** (b)(6), (b)(7)c added, however, that approximately four months later (b)(6), (b)(7)c invited (b)(6), (b)(7)c and the rest of the IFO project technical team to return to the meetings to field questions as the IFO upgrade neared release.

As shown above, the evidence indicates (b)(6), (b)(7)c had a reasonable basis to believe (b)(6), (b)(7)c disclosure during the executive steering committee meeting contained evidence of gross mismanagement and a gross waste of funds. Because of this, and because (b)(6), (b)(7)c made the disclosure to (b)(6), (b)(7)c who has (b)(6), (b)(7)c it appears this disclosure is also protected. Additionally, (b)(6), (b)(7)c admitted knowledge of this disclosure during (b)(6), (b)(7)c interviews with DOT OIG (b)(6), (b)(7)c terminated (b)(6), (b)(7)c approximately nine to ten months after (b)(6), (b)(7)c made this disclosure to (b)(6), (b)(7)c

Disclosure 3: In February or March 2011, (b)(6), (b)(7)c told (b)(6), (b)(7)c that Metaformers billed WMATA approximately $77,000 for EPM upgrade work performed by WMATA employees and an independent contractor.

FINDINGS:

(b)(6), (b)(7)c explained to us that (b)(6), (b)(7)c oversaw the day-to-day management of the IFO project, including the EPM component, and it was (b)(6), (b)(7)c responsibility to review contractor deliverables and approve them. In February or March 2011, (b)(6), (b)(7)c said (b)(6), (b)(7)c viewed an invoice from Metaformers for approximately $77,000 for EPM work (b)(6), (b)(7)c found a deliverable payment plan from August 2010 from Metaformers that charged WMATA $75,000 – rather than $77,000 – for "EPM & Financials Deployment." **(Attachment 8)** Despite being aware that Metaformers performed EPM *interface* work, (b)(6), (b)(7)c believed Metaformers billed WMATA for EPM *upgrade* work.

(b)(6), (b)(7)c said (b)(6), (b)(7)c knew that Metaformers did not perform EPM upgrade work. Two WMATA information technology employees and an independent contractor confirmed they performed the EPM upgrade from late 2010 to July 2011. (b)(6), (b)(7)c said (b)(6), (b)(7)c directed the WMATA employees to work with the independent contractor to upgrade the EPM from version 9.0 to 9.1 because Metaformers lacked a qualified employee to do the work. The WMATA information technology employees and the independent contractor told us, however, that Metaformers worked on the EPM *interface* with the rest of the IFO project.

According to (b)(6), (b)(7)c showed (b)(6), (b)(7)c the invoice and explained (b)(6), (b)(7)c that two WMATA information technology employees and an independent contractor had performed the EPM upgrade, not Metaformers. Consequently, (b)(6), (b)(7)c questioned why Metaformers billed WMATA. According to (b)(6), (b)(7)c responded by telling (b)(6), (b)(7)c don't sweat it. . . . [O]n a bigger picture, this is a small amount." **(Attachment 9, p. 79, lines 1895-1896)**

(b)(6), (b)(7)c acknowledged that (b)(6), (b)(7)c told (b)(6), (b)(7)c that Metaformers billed WMATA for work (b)(6), (b)(7)c said it did not do. (b)(6), (b)(7)c denied, however, that Metaformers improperly billed WMATA. (b)(6), (b)(7)c explained to us that the $75,000 line item on Metaformers's payment plan was for EPM interface, not upgrade, work. **(Attachment 8)**

(b)(6), (b)(7)c acknowledgement that (b)(6), (b)(7)c complained (b)(6), (b)(7)c about the Metaformers bill demonstrates (b)(6) made the disclosure to someone with (b)(6), (b)(7)c and (b)(6), (b)(7)c had knowledge of this disclosure. The evidence indicates, however, that (b)(6), (b)(7)c did not have a reasonable belief (b)(6), (b)(7)c was disclosing illegal or wasteful billing by Metaformers because the invoice did not explicitly charge for *upgrade* work. Given that the two WMATA information technology employees corroborated (b)(6), (b)(7)c assertion that Metaformers indeed performed work on the *interface* aspect of the EPM, it appears

unreasonable for (b)(6), (b)(7)c to assume the invoice was instead for the upgrade work Metaformers allegedly did not perform. Thus, it appears the disclosure is not protected.

Disclosure 4: In early 2011, (b)(6), (b)(7)c told (b)(6), (b)(7)c and several WMATA employees that Metaformers instituted an insufficient testing mechanism for the IFO project.

FINDINGS:

(b)(6), (b)(7)c alleges that sometime in early 2011, during a meeting attended by (b)(6), (b)(7)c and the rest of the IFO project team, he disclosed that Metaformers instituted an insufficient software testing mechanism for the PeopleSoft component of the IFO project. According to (b)(6), (b)(7)c Metaformers failed to implement a "full system test cycle" that (b)(6), (b)(7)c believed was necessary. Instead, according to (b)(6), (b)(7)c Metaformers would test and review only portions of a transaction entered into the computer system, not the entire transaction.

(b)(6), (b)(7)c believed Metaformers's testing system would lead to output errors requiring correction. (b)(6), (b)(7)c based (b)(6), (b)(7)c belief on years of experience performing similar PeopleSoft upgrades at other organizations. Additionally, several WMATA employees we interviewed agreed that Metaformers's testing mechanism was inadequate. According to (b)(6), (b)(7)c and others, after "going live" on July 10, 2011, the IFO system produced numerous errors.

(b)(6), (b)(7)c acknowledged that (b)(6), (b)(7)c disclosed (b)(6), (b)(7)c testing concern to (b)(6), (b)(7)c said parallel testing is . . . the absolute way to go. If you don't do it, this project will fail, blah, blah, blah." **(Attachment 7, p. 8, lines 189-191)** However, (b)(6), (b)(7)c decided, after consulting with Metaformers officials, against using the testing mechanism (b)(6), (b)(7)c recommended. In addition, (b)(6), (b)(7)c said the IFO schedule would not allow for such testing. Moreover, (b)(6), (b)(7)c advised that the number of errors produced by the system after going live was not unusual, and (b)(6), (b)(7)c did not attribute the number of errors to insufficient software testing.

(b)(6), (b)(7)c also told us that (b)(6), (b)(7)c lacked the necessary experience to make a judgment between the system testing Metaformers implemented and the more extensive testing (b)(6), (b)(7)c advocated. According to (b)(6), (b)(7)c experience was only with the human resources aspect of PeopleSoft upgrades, rather than other aspects, including financial, that the WMATA IFO project involved.

(b)(6), (b)(7)c admitted knowledge of this disclosure and (b)(6), (b)(7)c (b)(6), (b)(7)c It does not appear, however, that (b)(6), (b)(7)c could have reasonably believed (b)(6), (b)(7)c was disclosing evidence of gross mismanagement. As stated above, gross mismanagement creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission, but does not include decisions that are merely debatable. Concerning the PeopleSoft testing

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: Recommendation to Close OIG Investigation #I12G005SINV (b)(6), (b)(7)c

Date: May 29, 2013

From: (b)(6), (b)(7)c
Senior Attorney-Investigator, JI-3

To: Ronald C. Engler RCE
Director, Special Investigations, JI-3

On July (b)(6), (b)(7)c 2012, (b)(6), (b)(7)c emailed the Department of Transportation Office of Inspector General Hotline and alleged Blackfoot Electric Corporation discharged (b)(6), (b)(7)c on June (b)(6), (b)(7)c 2012, in reprisal for disclosing the company violated the Davis-Bacon and Related Acts. (b)(6), (b)(7)c also alleged Blackfoot, in reprisal for making this disclosure, did not pay prevailing wages it owed (b)(6), (b)(7)c under the Acts. At the time of (b)(6), (b)(7)c discharge, (b)(6), (b)(7)c for an American Recovery and Reinvestment Act of 2009 (ARRA)-funded project in (b)(6), (b)(7)c Under ARRA Section 1553(a), an employee of a non-federal employer that receives ARRA funds may not be discharged or discriminated against in reprisal for making a protected disclosure.

We initiated our investigation on July 17, 2012, and ultimately found evidence that (b)(6), (b)(7)c made an ARRA-protected disclosure on June (b)(6), (b)(7)c 2012, and Blackfoot Electric retaliated against (b)(6), (b)(7)c by discharging (b)(6), (b)(7)c the following day. (b)(6), (b)(7)c also found evidence that Blackfoot further retaliated against (b)(6), (b)(7)c when it subsequently failed to pay (b)(6), (b)(7)c prevailing wage back pay despite paying prevailing wages owed to other Blackfoot employees. We provided our findings in a Report of Investigation dated January 24, 2013, and emailed it to Department of Transportation Deputy General Counsel (b)(6), (b)(7)c on January 28, 2013.

Under ARRA requirements, the Secretary of Transportation shall determine whether there is sufficient basis to conclude Blackfoot Electric retaliated against (b)(6), (b)(7)c in violation of ARRA and shall issue an order denying relief in whole or in part or providing (b)(6), (b)(7)c with corrective action. Because the Office of the Secretary has declined to pursue corrective action in (b)(6), (b)(7)c matter, I recommend we close our investigative file.

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I12G0010300	11/01/13
TITLE U.S. ex rel. (b)(6), (b)(7)c et al. v. Washington Metropolitan Area Transit Authority of Washington, DC	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c	STATUS FINAL
	DISTRIBUTION JRI-3	APPROVED BY KAJ

PREDICATION:

This investigation was initiated based upon a referral from (b)(6), (b)(7)c Assistant U.S. Attorney for the District of Maryland - Northern Division, regarding a Qui Tam [U.S. ex rel. (b)(6), (b)(7)c and b)(6), (b)(7)c v. Washington Metropolitan Area Transit Authority (WMATA) of Washington, D.C., Case No. PJM-11-2477 (District of MD) filed Under Seal]. According to (b)(6), (b)(7)c and (b)(6), (b)(7)c WMATA violated the False Claims Act (FCA) by diverting Federal Transit Administration grant funds designated for capital and preventative maintenance projects to unauthorized payments of operating expenses. The (b)(6), (b)(7)c further stated WMATA submitted false financial statements to cover-up the diversion of funds.

Specifically, (b)(6), (b)(7)c and b)(6), (b)(7)c reported WMATA violated the FCA and submitted false financial statements when WMATA diverted FTA grant funds designated for capital and preventative maintenance projects to pay for operating expenses. The total monetary loss resulting from WMATA's alleged diversion of funds and fraudulent accounting is approximately $401 million. Of the total amount, approximately $201 million represented the loss to the federal government and approximately $200 million represented the losses to Maryland, Virginia, and the District of Columbia.

After studying whether the allegations in the complaint were supportable, no evidence corroborating the relator's allegations has been found. The PRIIA appropriation and disbursements post-dated the bond issue that the relator cited as the crux of his FCA complaint and such funds could not have been used to pay down the defendant's debt.

During the week of February 6, 2012,(b)(6), (b)(7)c counsel contacted AUSA (b)(6), (b)(7)c to say that he would like to amend the complaint on the theory that WMATA routinely fails to pay out the last payments due on a contract and retains the money and does so by fabricating expenses and labor hours to cover the money it retains from early contract terminations.

Document reviews and interviews of the (b)(6), (b)(7)c produced no evidence to support the original and amended allegations.

On February 27, 2013, in the United States District Court for the District of Maryland, United States District Judge (b)(6), (b)(7)c dismissed and closed this case in District Court.

In conclusion, this investigation did not substantiate the allegations. Based on the foregoing, I recommend that this case be closed.

ATTACHMENT

No.:	Description
1.	Final Order Judgment – Civil No.PJM 11-2477

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

(b)(6), (b)(7)c **et al.**	*	
	*	
Plaintiffs,	*	
	*	
v.	*	Civil No. **PJM 11-2477**
	*	
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY	*	
	*	
	*	
Defendant.	*	

FINAL ORDER OF JUDGMENT

Upon consideration of the Court's Order to Show Cause (Paper No. 18), to which Plaintiff has not responded, it is, this 27th day of February, 2013

ORDERED

1. The case shall be **DISMISSED WITHOUT PREJUDICE**; and

2. The Clerk shall **CLOSE** this case.

/s/
(b)(6), (b)(7)c
UNITED STATES DISTRICT JUDGE

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: Recommendation to Close OIG Investigation I12G0020300 Date: September 18, 2013

From: (b)(6), (b)(7)c ASAC (JI-3) Reply to Attn of:

To: Ronald C. Engler
Director, Special Investigations (JI-3)

In 2008, (b)(6), (b)(7)c (b)(6), (b)(7)c (b)(6), (b)(7)c IBM was in the process of submitting a bid to be the prime contractor on an Enterprise Resource Planning (ERP) contract with the Metropolitan Washington Airports Authority (MWAA), worth approximately $70 million. (b)(6), (b)(7)c assigned (b)(6), (b)(7)c to work on securing a subcontract with IBM on the ERP contract and participated in approximately 20 contract meetings with IBM.

In spring 2009, IBM awarded an ERP subcontract to BI Solutions worth approximately $1.5 million per year and, shortly thereafter, (6), (b)(7 sent (b)(6), (b)(7)c an email requesting (6), (b)(meet to discuss (b)(6), (b)(7)c (b)(6), (b)(7)c According to (b)(6), (b)(7)c and (6), (b)(7 met the next day at BI Solutions' office.

According to (b)(6), (b)(7)c during the meeting,)(6), (b)(7 produced an email from someone at IBM requesting specific bid numbers from BI Solutions.)(6), (b)(7 said (6), (b)(7 received bid information from (b)(6), (b)(7)c and gave it to IBM. IBM originally bid a higher number, but adjusted their bid based on the information provided by)(6), (b)(7 and were ultimately awarded the ERP contract.)(6), (b)(7 allegedly asked (b)(6), (b)(7)c to give (6), (b)($5,000.00 to pay (b)(6), (b)(7)c for the bid information. (b)(6), (b)(7)c said)(6), (b)(became very angry with (b)(6), (b)(7)c response was "if)(6), (b)(did not pay (b)(6), (b)(7)c there would be hell to pay."

Possible violations

- 18 USC § 1343 – Wire Fraud.

- 18 USC § 666 – Theft or bribery concerning programs receiving federal funds.

(b)(7)d took the lead in investigating (b)(6), (b)(7)c allegations. DOT/OIG assisted (b)(7)d in conducting interviews and reviewing subpoenaed records. (b)(7)d also conducted a forensic computer examination which, so far, has not resulted in finding the above mentioned email. (b)(6), (b)(7)c advised OIG that the (b)(7)d is continuing to conducting a financial audit of (b)(6), (b)(7)c assets. However, as of this date, the audit has not disclosed evidence addressing the above allegations. Because of the lack of evidence found supporting further investigation and because (b)(7)d no longer needs our assistance, I recommend we close our investigation.

#

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I12G0080500	DATE 8/23/13
TITLE (b)(6), (b)(7)c Charge/Judgment: Missouri Section 570.030 - Stealing a Motor Vehicle	PREPARED BY SPECIAL AGENT (b)(6), (b)(7)c (b)(6), (b)(7)c DISTRIBUTION JRI-5 (1)	STATUS Final Tk 1/3 APPROVED

DETAILS

On December 9, 2011, Missouri Department of Transportation (MODOT) Investigations reported that vehicles used for their Federal Transit Administration's (FTA) Capital Assistance Program for Elderly Persons and Persons with Disabilities had been fraudulently converted to personal use by (b)(6), (b)(7)c and (b)(6), (b)(7)c MODOT is designated by the Governor to administer these FTA funds for local agencies.

SA(b)(6), (b)(7 met with MODOT Investigations, and Missouri State Highway Patrol (MSHP), and obtained summaries of the (b)(6), (b)(7)c case. In addition, MODOT computers assigned to (b)(6) and (b)(6), (b)(7)c were obtained by U.S. Department of Transportation (DOT), Office of Inspector General (OIG) for imaging and analysis. The investigation disclosed the theft of four vehicles, valued at $44,019.

The case was initially presented to Jefferson City, MO, prosecutor,)(6), (b)(7) (b)(6), (b)(7)c by MODOT and the MSHP. SA(b)(6), (b)(7later presented the case to the United States Attorney's Office (USAO), Western District of Missouri, located in

Kansas City, MO. The USAO declined intervention since it was previously accepted at the local level.

On October 10, 2012, (b)(6), (b)(7)c and (b)(6), (b)(7)c were indicted in Jefferson City, MO. (b)(6), (b)(7)c and (b)(6), (b)(7)c were charged with four counts of stealing motor vehicles (Attachment 1 and 2)

On October 17, 2012, an arrest warrant was served on (b)(6) and 6), (b)(was taken into local custody (Attachment 3).

On October 17, 2012, an arrest warrant was served on (b)(6), (b)(7)c however, due to (b)(6), (b)(7)c was allowed to self-surrender to local authorities at a later date (Attachment 4).

On June 12, 2013, (b)(6), (b)(7)c and (b)(6), (b)(7)c pleaded guilty to four local felony charges of stealing a motor vehicle. Both received 5 years of unsupervised probation and were ordered to pay restitution in the amount of $41,555 (Attachment 5 and 6).

It is recommended this investigation be closed.

INDEX OF ATTACHMENTS

No.	Description
1.	Indictment – (b)(6), (b)(7)c dated October 10, 2012
2.	Indictment – (b)(6), (b)(7)c dated October 10, 2012
3.	Arrest Warrant – (b)(6), (b)(7)c dated October 17, 2012
4.	Arrest Warrant – (b)(6), (b)(7)c dated October 17, 2012
5.	Plea – (b)(6) , dated June 12, 2013
6.	Plea – (b)(6), (b)(7)c dated June 12, 2013

U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE
	I12G0210500	4/15/2013
TITLE	**PREPARED BY SPECIAL AGENT**	**STATUS**
U.S. (b)(6), (b)(7)c V. VEOLIA TRANSPORTATION ON DEMAND, INC. ET AL – (W.D. Mo. 12-1077) Oak Brook, IL Veolia Transportation on Demand, Inc., et al 31 U.S.C.§3729 et seq. – False Claims Act	(b)(6), (b)(7)c	Final
	DISTRIBUTION JRI-5 (1)	(b)(6), (b)(7)c 1/3 **APPROVED** MTM

DETAILS

This case was received as a Qui Tam complaint that was filed with and referred by the United States Attorney's Office, Western District of Missouri, alleging Veolia Transportation on Demand, Inc. et al (Veolia), violated the False Claims Act (FCA), 31 U.S.C.§§3729 et seq., when it knowingly and intentionally invoiced the government 42 times for an amount that exceeded representations made in its paratransit services contract agreement with the Kansas City Area Transportation Authority (KCATA). (b)(6), (b)(7)c alleged Kansas City Transportation Group, Kansas City, MO, underpaid its bus drivers as it performed the day-to-day services for Veolia. (b)(6), (b)(7)c further alleged Veolia submitted monthly invoices to KCATA for payments in excess of Veolia's Cost Proposal and the Best and Final Offer (BAFO) included in their agreement.

On October 18, 2012, (b)(6), (b)(7)c stated (b)(6), (b)(7)c did not have any direct knowledge or evidence that false claims were submitted to the government. (b)(6), (b)(7)c did not have any experience or knowledge of how federal grants were administered, nor was (b)(6), (b)(7)c an actual driver under the Veolia contract with KCATA. (b)(6), (b)(7)c researched the driver's pay issue (b)(6), (b)(7)c The basis of (b)(6), (b)(7)c allegations stemmed from informal wage conversations (b)(6), (b)(7)c had with Veolia bus drivers, and compared their statements about hourly pay to the paratransit services proposal Veolia made with KCATA; found on the shared drive of the company's computer system (Attachment 1).

On December 12, 2012, (b)(6), (b)(7)c (b)(6), (b)(7)c KCATA, stated the agreement did not dictate or outline specific bus driver labor rates. Veolia had a right to pay its bus drivers whatever rate it felt was appropriate to meet the

requirements of the agreement, and provide a fair, comparable wage to avoid heavy personnel turnover. (b)(6), (b)(7)explained the BAFO included an estimated Total Driver's Cost/Variable Cost per Vehicle Revenue Hour (TDC/VRH) dollar amount of $17.98; an amount KCATA considered a minimal, base-line dollar figure. KCATA knew the TDC/VRH proposed on the BAFO also included non-billable and overhead expenses for each employee to which Veolia was responsible. The TDC/VRH dollar amount was just one factor used in the sum that made up the Unit Cost dollar amount, $27.42, listed on each monthly invoice submitted by Veolia to KCATA for payment. KCATA agreed to pay Veolia the fixed Unit Cost for every billable service hour completed per month; regardless of what Veolia paid its drivers.

(b)(6), (b)(7)cdid not believe the government was at a loss or out any federal grant funding, based solely on the allegation the drivers were not paid an hourly wage equal to the TDC/VRH dollar amount shown on the BAFO. Furthermore, the allegations of false claims made to KCATA through monthly invoices submitted by Veolia, were considered to be untrue and uncorroborated.(b)(6), (b)(7)concurred and added all invoices were supported by the required service documents per the agreement (Attachment 2).

A document review of KCATA's Request for Proposal of Paratransit Services and procurement files (Attachment 3), its contract agreement with Veolia (Agreement #08-7006-30) (Attachment 4), the associated BAFO (Attachment 5), and related invoices (Attachment 6), revealed the amounts paid to Veolia for paratransit services were true and correct according to contract. Each invoice payment made by KCATA was for an amount equal to the amount charged for paratransit services rendered; including fixed costs ($1/12^{th}$ of the annual cost), plus any incentives earned, minus actual customer revenues collected and disincentives as outlined in the agreement.

On January 29, 2013, the USDOT-Office of the Secretary, Office of General Counsel, the USDOT-OIG, Office of Chief Counsel, and the Federal Transit Administration concurred in an email to AUSA (b)(6), (b)(7)c that allegations made against Veolia did not merit further investigation and the U.S. should decline to intervene (Attachment 7).

On March 29, 2013, the USAO, Western District of Missouri, filed an Order to Dismiss the case of U.S. (b)(6), (b)(7)c v. Veolia Transportation on Demand, Inc. et al (12-01077), and Unseal the complaint (Attachment 8).

It is recommended this investigation be closed.

Index of Attachments

No.	Description
1	Interview of (b)(6), (b)(7)c – October 18, 2012
2	Interview of (b)(6), (b)(7)c – December 12, 2012
3	KCATA Request for Proposal of Paratransit Services and procurement files
4	KCATA Agreement (#08-7006-30) with Veolia
5	Veolia Cost Proposal/Best and Final Offer (BAFO)
6	Veolia invoices submitted to KCATA
7	USDOT-OGC/OIG-OCC/FTA concurrence in recommendation to decline intervention
8	USAO, Order to Dismiss the Case and Unseal the complaint – March 29, 2013

U.S. Department of Transportation
Office of the Secretary of Transportation

Office of Inspector General
Washington, DC 20590

September 12, 2013

Brian Seitchik
Chief of Staff
Office of the Honorable Daniel Lungren
U.S. House of Representatives
2339 Gold Meadow Way, Suite 220
Gold River, CA 95670

Re: (b)(6), (b)(7)c

Dear Mr. Seitchik:

This letter is in response to Congressman Lungren's letter of September 17, 2012, requesting an inquiry into allegations made by (b)(6), (b)(7)c who was the subject of a U.S. Department of Transportation, Office of Inspector General (OIG) investigation, alleges OIG special agents altered witness statements and omitted exculpatory evidence from their report of investigation. 6), (b)(alleges, in turn, that 6), (b)((b)(6), (b)(7)c , relied upon the OIG report in deciding to terminate him. (b)(6), (b)(7)c also alleges that OIG agents falsified their report because one of the investigating special agents is (b)(6), (b)(7)c of the complainant. As explained below, we were unable to substantiate (b)(6), (b)(7)c allegations.

(b)(6), (b)(7)c alleges OIG agents (b)(6) and (b)(6), (b)(7)c : falsified the report of investigation on behalf of another OIG special agent, (b)(6), (b)(7)c whose (b)(6), (b)(7)c filed the complaint that triggered the investigation. (b)(6) alleges b)(6), (b)(7)c (b)(6), (b)(7)c discussed the complaint with (b)(6), (b)(7)c who discussed it with Agent (b)(6), (b)(7)c with whom 6), (b)(allegedly had a "close, personal relationship." Our findings, however, do not support these allegations. First, the complaint was filed anonymously, not by (b)(6), (b)(7)c Second, (b)(6), (b)(7)c had left OIG employment before the investigation began and, therefore, had no role in the investigation. As such, even if (b)(6), (b)(7)c had filed the complaint, there was no conflict of interest in the OIG's investigation. Third, we found no evidence of a close, personal relationship between (b)(6), (b)(7)c and(b)(6), (b)(7)cthat may have led)(6), (b)(7)to contact (b)(6), (b)(7)c about the complaint. Finally, we found no evidence that (b)(6), (b)(7)c (b)(6), (b)(7)c contacted(b)(6), (b)(7)cabout the complaint.

Regardless of their motive, the evidence also does not support the claim that the OIG agents intentionally altered (b)(6), (b)(7)c testimony and excluded exculpatory evidence. (b)(6), (b)(7)c alleges OIG agents added the word "recycling" to6), (b)(testimony describing the dumpster containing construction materials. In so doing, the agents made it appear in their report that (b)(6), (b)(7)c admitted (b)(6) took construction items from a (b)(6), (b)(7)c "recycling" dumpster (as opposed to a "trash" dumpster), which constituted theft.

We confirmed that, contrary to the report, (b)(6), (b)(7)c did not use the word "recycling" to describe the dumpster. (b)(6) described the container in question as only a "dumpster." 6), (b)(did not make any distinction between a "recycling" or a "trash" dumpster. Although 6), (b)(may have implied it was a trash dumpster by saying the construction materials in it were of no value to (b)(6), (b)(7)c testimony does not indicate that), (b) explained to the agents that), (b)thought the dumpster was for trash and, therefore, was able to take items from it without (b)(6), (b)(7)cpermission.

Moreover, there was evidence for the OIG agents to conclude that (b)(6), (b)(7)c was referencing a recycling dumpster. For example, witnesses told the agents it was a recycling dumpster and (b)(6), (b)(7)c employees, like (b)(6), (b)(7)c were not allowed to take items from it for their personal use (and there was a sign at the dumpster to that effect). Given these things, as well as), (b) admission that 6), (b)("salvaged" items from (b)(6), (b)(7)c "dumpsters," it was reasonable for the OIG agents to conclude (b)(6), (b)(7)c admitted taking items from a recycling dumpster. Even if their conclusion was erroneous, because it was reasonable, we cannot conclude they intentionally misstated the evidence of), (b) admission. Further, the OIG agents included their summary of (b)(6), (b)(7)c testimony and),, (b)affidavit in their report. In neither item, does), (b) use the word "recycling" to describe the type of dumpster. We believe that had the agents intended to alter(6), (b)(testimony about the type of dumpster, (6), (b)(would not have included that testimony with the report provided to (b)(6), (b)(7)c

(b)(6), (b)(7)c also alleges the agents intentionally omitted from the report that (b)(6), (b)(7)c employee who fashioned a gate for(6), (b)(out of materials recovered from (b)(6), (b)(7)c did not do the work on (b)(6), (b)(7)c time and that (b)(6), (b)(7)c paid the employee for6), (b)(work. We found the report does not state or imply that the employee fabricated the gate on (b)(6), (b)(7)c time or that (b)(6), (b)(7)c did not pay for the fabrication. The report is silent on both issues. (b)(6), (b)(7)c testimony was attached to the report, however, and it states that), (b) offered to pay the employee for the fabrication. Again, we believe that had the agents intended to hide this evidence they would not have included it in an attachment to the report.

(b)(6), (b)(7)c also alleges the agents intentionally failed to state in the report that), (b) did not take I-beams from (b)(6), (b)(7)c for (b)(6) personal use, and that6), (b)(stored them on his property for (b)(6) We found the report does not state that (b)(6), (b)(7)c took the

I-beams for (b)(6), (b)(7)c personal use. However, it also does not state that (b)(6), (b)(7)c stored the I-beams on (b)(6), (b)(7)c property for (b)(6), (b)(7)c It states only that (b)(6), (b)(7)c took the I-beams to (b)(6), (b)(7)c property. The agent's summary of (b)(6), (b)(7)c testimony, which was attached to the report states, however, that (b)(6), (b)(7)c said (b)(6), (b)(7)c had no intention to use the I-beams for (b)(6), (b)(7)c personal benefit. Similarly, (b)(6), (b)(7)c affidavit, also attached to the report, states the I-beams were stored on (b)(6), (b)(7)c property for use by (b)(6), (b)(7)c Again, had the agents intentionally tried to conceal evidence, we believe they would not have included it in attachments to the report.

Finally, (b)(6), (b)(7)c alleges the OIG agents recommended to (b)(6), (b)(7)c that (b)(6), (b)(7)c be fired. Per OIG policy, OIG does not make recommendations for disciplinary action in administrative matters. In this case in particular, we did not find any evidence that the agents recommended that (b)(6), (b)(7)c terminate (b)(6), (b)(7)c The report was submitted by OIG to (b)(6), (b)(7)c only because "it might be useful as you examine ... (b)(6), (b)(7)c for possible misconduct." Moreover, (b)(6), (b)(7)c officials told us (b)(6), (b)(7)c did not rely upon the report in taking administrative action against (b)(6), (b)(7)c They told us they took into account different events involving (b)(6), (b)(7)c that they investigated. In sum, we found no evidence that OIG special agents intentionally attempted to influence (b)(6), (b)(7)c decision to discipline (b)(6), (b)(7)c

Thank you for the opportunity to review this matter. If you have any questions, please contact me at (b)(6), (b)(7)c

Sincerely,

Ronald C. Engler
Director, Special Investigations

FORENSIC MEDIA ANALYSIS REPORT
Case No. I13E013SINV
Date: February 11, 2013

Case Title: Abuse of Authority	**Requesting Office:** JI-3 (Washington, DC)
Case Agent: (b)(6), (b)(7)c	**Computer Crimes Agent:** ASAC William Swallow

BACKGROUND

See JI-3 supervisor for details.

AUTHORITY TO CONDUCT FMA

☐ Warrant ☐ Consent ☐ Subpoena ☒ Banner ☐ Other:

The laptop computer examined is government-issued. The Dell Latitude E6230 laptop contained DOT warning banner language which was extracted from the Microsoft Windows Software Registry File (HKEY_LOCAL_MACHINE\Software\Microsoft\Windows\CurrentVersion\policies\system):

> WARNING! You are accessing a U.S. Government information system, which includes this computer, this computer network, all computers connected to this network, and all devices and storage media attached to this network or to a computer on this network. This information system is provided for U.S. Government authorized use only. Unauthorized or improper use of this system may result in disciplinary action, as well as civil and criminal penalties. By using this information system, you understand and consent to the following: you have no reasonable expectation of privacy regarding communications or data transiting or stored on this information system.

SUMMARY OF FINDINGS

The Computer Crimes Unit's (CCU) examination of the laptop computer did not identify any evidence that (b)(6), (b)(7)c abused(b)(6), (b)(7)c, (b)authority or gained unauthorized access to other users' email. CCU conducted a detailed review of the system registry, allocated and unallocated files, email, Internet history, and event logs on the computer and found no evidence (b)(6), (b)(7)c was accessing other users' email.

DETAILS

Items Analyzed

(1) Hard Drive (HDD) – Samsung SSD- Model MZ-7PC128D, Serial Number S0TYNSAC689311, 128 Gigabytes. The single hard drive was taken from a Dell Latitude E6230.

On January 16, 2013, CCU created a forensic evidence file of Evidence Item (1) above using Guymager v6.12-1 while the system was booted into DEFT v7.1, a linux forensic live-CD environment (Attachment 1). The DEFT environment is a forensic environment in that it is a software write-block designed to prevent any unintentional writes or changes occurring on the evidence. The image file was created using Expert Witness/EnCase (Exx) forensic image format with the filename S0TYNSAC689311. An MD5[1] hash algorithm was run against the subject hard drive and was reported as 8b7448959ce66524d7217a6f651da633.

The drive was whole-disk encrypted with Microsoft's BitLocker Drive Encryption and required it be decrypted before further analysis could take place. CCU contacted JM-40 to request domain administrator access to the Active Directory. With this access, CCU was able to view the machine specific BitLocker Recovery Key necessary for the decryption of the forensic copy of the laptop computer. Upon completion of the decryption process, CCU made another verified, forensic copy of the decrypted HDD for analysis.

From January 17, 2013 to January 24, 2013, CCU conducted a forensic analysis of the laptop computer, hard drive serial number S0TYNSAC689311. The forensic evidence file was called 5VG7SY24 (name given to the target drive). The primary tool used to conduct the analysis was The Sleuthkit (TSK)[2].

Partition Table Details

The following partition information was obtained from running TSK's "mmls" command:

Command issued: mmls 5VG7SY24.E??

[1] MD5 is an algorithm that is used to verify data integrity through the creation of a 128-bit message digest from data input (which may be a message of any length) that is claimed to be as unique to that specific data as a fingerprint is to the specific individual. Source: http://searchsecurity.techtarget.com

[2] The Sleuth Kit (TSK) is a library and collection of command line tools that allow you to investigate disk images. The core functionality of TSK allows you to analyze volume and file system data.

MMLS Output:

```
DOS Partition Table
Offset Sector: 0
Units are in 512-byte sectors

     Slot    Start        End          Length       Description
00:  Meta    0000000000   0000000000   0000000001   Primary Table (#0)
01:  -----   0000000000   0000002047   0000002048   Unallocated
02:  00:00   0000002048   0000616447   0000614400   NTFS (0x07)
03:  00:01   0000616448   0250066943   0249450496   NTFS (0x07)
04:  -----   0250066944   0312581807   0062514864   Unallocated
```

The "mmls" command identified two NTFS partitions, one starting at sector 2048 and the other starting at sector 616448. Partition 2048 contained system and metadata files. Review of partition 2048 did not identify any files relevant to the investigation. Partition 616448 contained user programs and files normally accessed by the computer user. The remainder of the examination was focused on analysis of this partition.

Registry Analysis

Registry Browser version 3.09a was used to examine the system registry[3]. The system details from the Registry Browser report (Attachment 2) follow:

System Details

Registered Owner	JM-40
Registered Organization	USDOT-OIG
ProductId	55041-007-1367713-86902
Product Key	BBBBB-BBBBB-BBBBB-BBBBB-BBBBB
CurrentVersion	6.1
CSDVersion	Service Pack 1
CurrentBuildNumber	7601
ProductName	Windows 7 Enterprise
InstallDate	26 Sep 2012, 18:39:11

[3] A central hierarchical database used in Microsoft Windows used to store information necessary to configure the system for one or more users, applications and hardware devices.

Computer Name	(b)(7)e
Enable User Account Control (VISTA)	YES
ShutdownTime	17 Jan 2013, 13:21:09 (17 Jan 2013, 18:21:09 GMT)
NtfsDisableLastAccessUpdate	YES

The following user accounts were represented in the system registry:

User Profiles

ProfilesDirectory	%SystemDrive%\Users
User: S-1-5-18	
ProfileImagePath	%systemroot%\system32\config\systemprofile
RefCount	1
User: S-1-5-19	
ProfileImagePath	C:\Windows\ServiceProfiles\LocalService
User: S-1-5-20	
ProfileImagePath	C:\Windows\ServiceProfiles\NetworkService
User: S-1-5-21-1227585680-2448872272-505251613-1002	
ProfileImagePath	C:\Users\Local_Admin
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users(b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users (b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c

ProfileImagePath	C:\Users\(b)(6), (b)(7)(c)
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users(b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users' (b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users(b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)
User:	(b)(6), (b)(7)c
ProfileImagePath	C:\Users' (b)(6), (b)(7)c
RefCount	0
ProfileLoadTime	(null date/time)

User is OIG employee
User is OIG employee
User)(6), (b)(7)(c is OIG employee (b)(6), (b)(7)(c)
User ' is OIG employee

Examiner Note: It is not unusual to have these user accounts on the computer, because they provide IT support for the OIG.

Review of recent documents cache for user (b)(6), (b)(7)c identified an executable file called "Wireshark." Wireshark is a network protocol analyzer. It is designed to capture network traffic coming across the computer's network interface. The tool is often used by computer security professionals to identify any unusual or unauthorized network traffic on the computer (e.g. communicating with malicious websites) that may indicate a security vulnerability or malicious activity.

Excerpt from Registry Browser Report:

Extension: exe
Last Modified: 21 Dec 2012, 06:08:51 (21 Dec 2012, 11:08:51 GMT)
Wireshark-win64-1.8.4.exe
Telerik_Reporting_Trial_Installer_Q3_2012_v6_2_12_1017.exe
vsupdate_KB2707250.exe
Computer:I:\dotNetFx40_Full_setup.exe
UsersFiles:{E2900010-374D-123F-6545-916439C4925E}:SetupVirtualCloneDrive5450.exe

Examiner Note: Wireshark is not standard OIG software.

Additional review of recent documents cache identified two "pcap" files that appear to have been generated on December 21, 2012 and January 7, 2013.

Excerpt from Registry Browser Report:

Extension: .pcapng
Last Modified: 07 Jan 2013, 11:04:45 (07 Jan 2013, 16:04:45 GMT)
(b)(6), (b)(7)c ->
->

Pcap files are created by Wireshark when saving results of a network capture session.

Registry Browser's IE Cache Viewer was used to review Internet Explorer Internet history. Review of the IE Cache determined user account (b)(6), (b)(7)c downloaded the Wireshark program on December 21, 2012 from the following Internet location:

http://wiresharkdownloads.riverbed.com/wireshark/win64/Wireshark-win64-1.8.4.exe

Visiting the link above confirmed the Wireshark program is downloaded.

The specific IE cache was located in User folder belonging to (b)(6), (b)(7)c specifically in AppData/Local/Microsoft/Windows/History/Low/History.IE5/MSHist012012121720121224.

Registry keys (NTUSER.DAT files) belonging to user (b)(6), (b)(7)c were exported for both the users' regular and "–sa" accounts using FTK 3.4.1 for further analysis.

(b)(6), (b)(7)c

(b)(6), (b)(7)c CCU researched the registry settings for these keys so they could be reviewed on the forensic image. In Microsoft support article http://support.microsoft.com/kb/202517 "Items that are deleted from a shared mailbox go to the wrong folder in Outlook," Microsoft specifies the registry keys for changing the default deleted items setting as follows: (Note: multiple versions are listed to detail the differing versions of Outlook for which registry keys were identified on the machine in question.)

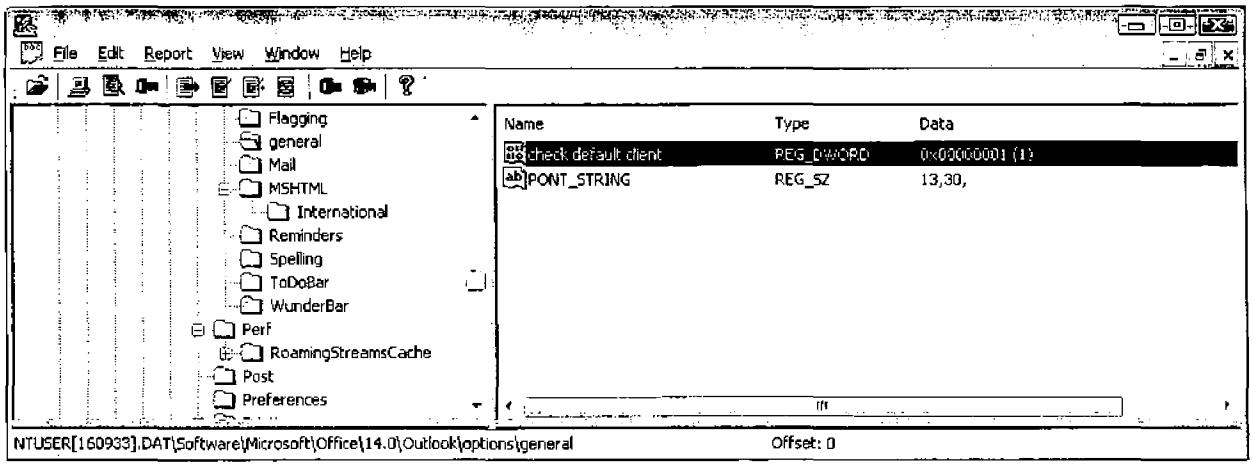
For Outlook 2010
HKEY_CURRENT_USER\Software\Microsoft\Office\14.0\Outlook\Options\General

For Outlook 2007
HKEY_CURRENT_USER\Software\Microsoft\Office\12.0\Outlook\Options\General

For Outlook 2003
HKEY_CURRENT_USER\Software\Microsoft\Office\11.0\Outlook\Options\General

Microsoft specifies a registry value of DWORD named *DelegateWastebasketStyle* with a value of 8 to store deleted items in the delegates (your) folder, and a value of 4 to store deleted items in the mailbox owner's folder.

CCU reviewed the exported registry hives using AccessData Registry Viewer version 1.6.3.34, analyzed the registry keys in question, and found no evidence that the registry setting for Deleted Items on either profiles had been modified (i.e. set to "4" in an effort to keep deleted items from being saved to the delegates Deleted Items folder):



Additionally, a delegated user can specify to open another user's mailbox in Outlook under the File/Info/Account Settings/Change/More Settings/Advanced/Open these additional mailboxes: in Outlook 2010. CCU identified that Outlook keeps the list of accounts to be opened in a subkey to the registry path: *user profile*\Software\Microsoft\Windows NT\CurrentVersion \Windows Messaging Subsystem\Profiles\Outlook. CCU confirmed this behavior in the OIG domain setup by adding another user's account and capturing the associated registry keys as shown below.

CCT (b)(6), (b)(7)c had SA (b)(6), (b)(7)c add(6), (b)(account as a delegate in Outlook. Then CCT (b)(6), (b)(7)c configured Outlook 2010 to open the account using the *Advanced/Open these additional mailboxes* setting:

(b)(7)e

(b)(7)e

The system registry was opened and to document the local registry key created as shown: (*user profile*\Software\Microsoft\Windows NT\CurrentVersion\Windows Messaging Subsystem\Profiles\Outlook\########)

(b)(7)e

Profile List confirming the Security Identifier for CCT (b)(6), (b)(7)c domain account b)(6), (b)(7)c to confirm the path above.

(b)(6), (b)(7)c

Analysis of the exported registry keys for the b)(6), (b)(7)(accounts in question (both the regular and –sa account keys using Access Data's Registry Viewer 1.6.3.34) found no evidence that additional accounts were setup to be opened by Outlook in this manner.

CCU reviewed all keys under the NTUSER.DAT\Software\Microsoft\Office \14.0\Outlook\ path for both b)(6), (b)(7)(profiles in case there were any other settings that may indicate access to another user's mailbox.

CCU searched the user's Registry (NTUSER.DAT) for any "@oig" references finding results for items such as last number dialed in Communicator (b)(6), (b)(7)c however, no evidence of mailbox access was identified.

File Analysis

The following details the results of a review of files (undeleted and deleted) on the 616448 partitions. Review of the partition's MFT[4] with TSK's "fls –Fr" command and identified several files requiring further analysis.

Command issued: fls -Fr -o 616448 5VG7SY24.E??

PCAP Files:

As previously discussed, PCAP files are created by Wireshark (and other similar network capture tools) when saving results of a network capture session.

FLS command output related to the PCAP files:

r/r 210816-128-4: Temp/Capture Files/OIG· 2012_12_21_0645.pcapng
r/r 3422-128-4: Temp/Capture Files/OIG·)(6), (b)(7)2012_12_21_1130.pcapng
r/r 113922-128-4: Temp/Capture Files/OIG· 2013_01_07_1045.pcapng
r/r 173720-128-4: Users/)(6), (b)(7AppData/Roaming/Microsoft/Windows/Recent/OIG-b)(6), (b)(7)(2012_12_21_1130.pcapng.lnk
r/r 114000-128-4: Users)(6), (b)(7AppData/Roaming/Microsoft/Windows/Recent/OIG-(b)(6), (b)(7)c 2013_01_07_1045.pcapng.lnk

[4] The NTFS file system contains a file called the *master file table*, or MFT. There is at least one entry in the MFT for every file on an NTFS file system volume, including the MFT itself. All information about a file, including its size, time and date stamps, permissions, and data content, is stored either in MFT entries, or in space outside the MFT that is described by MFT entries.

The highlighted inodes above represented the unique MFT record number for those files.

The TSK command "icat" was used to extract the "pcapng" for each of the inodes above.

Examiner Note: The "lnk" link files above were not extracted. They are link files that represent the Users most recent activity. This was previously discussed in the Registry Analysis section.

Command issued: icat -o 616448 5VG7SY24.E?? 210816 > OIG-(b)(6), (b)(7)c 2012_12_21_0645.pcapng

The same command was issued for inodes 3422 and 113922.

Wireshark version 1.8.4 was used to examine the three extracted PCAP files above. Analysis confirmed the PCAPs were obtained on December 21, 2012 and January 7, 2013. The network traffic appears to be from the DOT network, because DOT Internet Protocol (IP) addresses are present in the packet captures.

Examiner Note: Analysis cannot determine the intended purpose of the PCAP captures.

OST Files:

OST files are Microsoft Offline Outlook Data files. OST files are used when you have an Exchange account and want to work offline. They are common on the OIG laptop computers. The OST files are created when a user launches Microsoft Outlook from their account.

FLS command output related to the OST files:

r/r 123967-128-4:
Users(b)(6), (b)(7)AppData/Local/Microsoft/Outlook (b)(6), (b)(7)c
r/r 43791-128-3: Users(b)(6), (b)(7)AppData/Local/Microsoft/Outlook/outlook.ost

The first OST file belongs to user(b)(6), (b)(7)cwhich is (b)(6), (b)(7)c The second OST file belongs to (b)(6), (b)(7)cwhich is (b)(6), (b)(7)c It is not unusual to see the OST file of another user, especially an IT with domain level account on the OIG Active Directory.

Both OST files were extracted using the 'icat" command.

Command issued: (b)(7)e

Kernel OST viewer was used to examine the OST files. A detailed review of the emails, files, and folder structure did not identify any indication other OIG users' emails were present.

TSK's "istat" command was used to examine the metadata (e.g. files dates/times) associated with (b)(6), (b)(7)c OST file. This command extracts metadata from the MFT.

Command issued:

istat –o 616448 5VG7SY24.E?? 43791

Output from istat command:

MFT Entry Header Values:
Entry: 43791 Sequence: 1
$LogFile Sequence Number: 89884751
Allocated File
Links: 1

$STANDARD_INFORMATION Attribute Values:
Flags: Archive, Not Content Indexed
Owner ID: 0
Security ID: 540 ()
Created: Thu Aug 11 16:25:27 2011
File Modified: Thu Aug 11 16:31:25 2011
MFT Modified: Wed Sep 26 14:29:45 2012
Accessed: Thu Aug 11 16:25:27 2011

$FILE_NAME Attribute Values:
Flags: Archive, Not Content Indexed
Name: outlook.ost
Parent MFT Entry: 2315 Sequence: 1
Allocated Size: 0 Actual Size: 0
Created: Wed Sep 26 14:29:27 2012
File Modified: Wed Sep 26 14:29:27 2012
MFT Modified: Wed Sep 26 14:29:27 2012
Accessed: Wed Sep 26 14:29:27 2012

According to the file system's metadata, the OST file was created on August 11, 2011. That is consistent with the creation of the user's NTUSER.DAT file. The NTUSER.DAT file is part of the system registry and it contains the registry settings for their individual account. The file is created the first time the user logs onto the computer.

File listing from "fls" output provided the following for (b)(6), (b)(7)c .DAT file:

r/r 42730-128-3: Users/ (b)(6), (b)(7)c

Command issued:

istat –o 616448 5VG7SY24.E?? 42730

Output from istat command:

MFT Entry Header Values:
Entry: 42730 Sequence: 1
$LogFile Sequence Number: 4588478472
Allocated File
Links: 1

$STANDARD_INFORMATION Attribute Values:
Flags: Hidden, System, Archive, Not Content Indexed
Owner ID: 0
Security ID: 540 ()
Last User Journal Update Sequence Number: 778761136
Created: Thu Aug 11 15:08:15 2011
File Modified: Wed Sep 26 14:35:32 2012
MFT Modified: Tue Jan 15 09:16:39 2013
Accessed: Tue Jan 15 09:16:39 2013

$FILE_NAME Attribute Values:
Flags: Archive
Name: (b)(6), (b)(7)c .DAT
Parent MFT Entry: 2278 Sequence: 1
Allocated Size: 0 Actual Size: 0
Created: Wed Sep 26 14:29:22 2012
File Modified: Wed Sep 26 14:29:22 2012
MFT Modified: Wed Sep 26 14:29:22 2012
Accessed: Wed Sep 26 14:29:22 2012

The metadata from the "istat" command shows the (b)(6), (b)(7)c .DAT file was created on August 11, 2011.

File listing from "fls" output provided the following for (b)(6), (b)(7)c .DAT file:

r/r 123344-128-1: Users/ (b)(6), (b)(7)c DAT

Command issued:

istat –o 616448 5VG7SY24.E?? 123344

Output from istat command:

MFT Entry Header Values:
Entry: 123344 Sequence: 2
$LogFile Sequence Number: 4621543648
Allocated File
Links: 1

$STANDARD_INFORMATION Attribute Values:
Flags: Hidden, System, Archive, Not Content Indexed
Owner ID: 0
Security ID: 1557 ()
Last User Journal Update Sequence Number: 783087632
Created: Thu Oct 4 15:57:54 2012
File Modified: Tue Jan 15 21:53:39 2013
MFT Modified: Tue Jan 15 21:53:38 2013
Accessed: Tue Jan 15 21:53:39 2013

$FILE_NAME Attribute Values:
Flags: Hidden, System, Archive
Name: NTUSER.DAT
Parent MFT Entry: 123342 Sequence: 2
Allocated Size: 786432 Actual Size: 0
Created: Thu Oct 4 15:57:54 2012
File Modified: Thu Oct 4 15:57:54 2012
MFT Modified: Thu Oct 4 15:57:54 2012
Accessed: Thu Oct 4 15:57:54 2012

Based on the MFT metadata above from (b)(6), (b)(7)c NTUSER.DAT file, the first time (b)(6), (b)(7)c logged onto this computer was October 4, 2012.

Based on the above review, there is no indication (b)(6), (b)(7)c opened and viewed email within (b)(6), (b)(7)c OST file.

MSG Files

MSG files are Microsoft Outlook messages saved as files.

FLS command output related to the MSG files:

r/r 134369-128-4:	$Recycle.Bin/S-1-5-21-3276024028-2167059486-376940349-12695/$R4S529K.msg
r/r 130313-128-4:	$Recycle.Bin/S-1-5-21-3276024028-2167059486-376940349-12695/$RIR3URJ.msg
r/r 113858-128-4:	$Recycle.Bin/S-1-5-21-3276024028-2167059486-376940349-12695/$RT3FJHF.msg

There were three MSG files located in the Recycle Bin[5] with an assigned RID of 12695. The RID is known as the "relative identifier" and is unique to a specific user account. A review of the Registry Browser Report previously obtained running Registry Browser identified RID 12695 belonging to user (b)(6), (b)(7)c or (b)(6), (b)(7)c See excerpt from Registry Report below.

User: S-1-5-21-3276024028-2167059486-376940349-12695
ProfileImagePath C:\Users\(b)(6), (b)(7)c

All three MSG files were extracted using the following command.

```
for file in `less listofmsgfiles.txt | awk '{print $2}' |awk -F: '{print $1}'`; do icat -o 616448 5VG7SY24.E?? $file > MSG-EXPORT/$file.msg; done
```

The above command uses "icat" to extract each of the msg files based the list obtained from the previous "fls" command.

Each of the MSG files was opened in Microsoft Office and reviewed. All three email messages had Jason Carroll on distribution.

Additional File Analysis

Partition 616448 was mounted in Linux and logical files reviewed. Review of DOC, XLS and PDF files did not identify any items of investigative interest.

[5] The Recycle Bin is temporary storage for files the user has deleted.

TSK's "fls –Frd" command was issued to obtain a listing of all deleted files still referenced in the MFT. Review of the file listing output from the "fls" command did not identify any deleted DOC, XLS, PDF, MSG, PST, or OST files.

Internet History Analysis

CCU conducted a detailed review of the Internet history cache to identify any Outlook Web Access (OWA) or other unusual or suspicious Internet activity related to the allegations. Registry Browser's IE Cache program was used to examine the Internet history. A detailed review of every website accessed did not identify any OWA activity. Further, it did not identify any unusual activity, other than previously discussed with the downloading of the Wireshark program.

Event Log Analysis

CCU conducted a detailed review of the system events logs. FTK Imager 3.0.0.1443 was used to extract the System, Application, and Security event logs. Microsoft's Event Viewer was used to review the extracted logs. Analysis of the event logs did not identify any activity that would indicate (b)(6), (b)(7)c accessed another user's email.

ATTACHMENTS

1. Forensic Media Collection Report
2. Registry Browser Report

Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION**: OIG Investigation # I13E019SINV, Re: Alleged Violations of Employee Conflict of Interest and Outside Employment Regulations

Date: November 14, 2013

From: Ronald C. Engler RCE
Director, Special Investigations (JI-3)

Reply to Attn. of: X6-4189

To: Lisa Baccus
FAA Ethics Officer (AGC-440)

On June 6, 2013, the Office of Inspector General (OIG) Complaint Center Operations received an anonymous complaint alleging FAA Technical Operations employees may have violated conflict of interest and outside employment regulations as a result of their ownership of or employment by Green Solutions Engineering & Energy Management and Building Automation Consultants, LLC. These companies were allegedly awarded contracts or subcontracts to install a Johnson Controls HVAC system at FAA's Philadelphia air traffic control tower and terminal radar approach control facilities.

We found no evidence FAA awarded a contract to either of the two companies or that the companies received subcontracts at FAA's Philadelphia facilities. Nevertheless, one company's reference on its website to a "Government Project" and "FAA experience" may violate the prohibitions of 5 CFR § 2635.702 regarding a federal employee using his public office for private gain or for the endorsement of any service or enterprise. Also, four of the five employees employed by these companies were required to submit a confidential financial disclosure report (OGE Form 450) in 2013. Three of these employees failed to report their outside employment in the report. Finally, FAA and federal acquisition regulations prohibit contracting officers from awarding contracts to federal employees or companies owned by federal employees. We found Building Automation Consultants, which is owned by an FAA employee, advertised the company's availability for federal government contracts.

Our Report of Investigation on this matter is attached for your review and any action you deem appropriate. If you have any questions or concerns, please feel free to contact me at (b)(6), (b)(7)c or Assistant Special Agent-in-Charge, (b)(6), (b)(7)c at (b)(6), (b)(7)c (b)(6), (b)(7)c

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U.S. Department of Transportation
Office of Inspector General

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I13E019SINV	DATE November 13, 2013
TITLE Federal Aviation Administration: Alleged Violations of Employee Conflict of Interest and Outside Employment Regulations	PREPARED BY: (b)(6), (b)(7)c Senior Investigator Special Investigations, JI-3	STATUS Final
	DISTRIBUTION FAA Ethics Officer (AGC-440) Case File	APPROVED BY: JI-3 (RCE/EVC)

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BACKGROUND

On June (b)(6), (b)(7)c 2013, the OIG Complaint Center Operations received an anonymous complaint alleging FAA Technical Operations employees violated federal conflict of interest and outside employment regulations as a result of their ownership or employment with Green Solutions Engineering & Energy Management (Green Solutions) and Building Automation Consultants, LLC. The complainant alleges the companies were awarded contracts or subcontracts to install a Johnson Controls HVAC system at FAA's Philadelphia air traffic control tower (ATCT) and terminal radar approach control (TRACON) facilities.

The complainant disclosed that FAA (b)(6), (b)(7)c employees (b)(6), (b)(7)c , (b)(6), (b)(7)c and (b)(6), (b)(7)c are also listed as employees of Green Solutions on the company's website (www.greensolutionspc.com). Under the website's "Contact Us" tab, (b)(6), (b)(7)c is listed as (b)(6), (b)(7)c is listed as (b)(6), (b)(7)c (b)(6), (b)(7)c and (b)(6), (b)(7)c (b)(6), (b)(7)c **(Attachment 1)** State records show the business was incorporated on October 4, 2011, and lists (b)(6), (b)(7)c as the "Registered Agent." All work for FAA's (b)(6), (b)(7)c (b)(6), (b)(7)c

The complainant also alleges that under the Green Solutions website's tab for "Projects and Clients" it states, "Every business organization needs resources that it can use to enhance their business. Green Solutions is proud to be in alliance with the following organization: Building Automation Consultants, LLC," and includes a link to the Building Automation Consultants website. **(Attachment 2)** It also states on Building Automation Consultants' website (www.building-automation-consultants.com) under the tab for "Government," "We have extensive experience in Government Projects, especially in regards to the Federal Aviation Administration (FAA). Recent projects in 2013 include the Philadelphia ATCT and TRACON (Johnson Controls [HVAC system])." **(Attachment 3)** The complaint indicates the New York Terminal Construction Office (b)(6), (b)(7)c ,manages the Philadelphia ATCT and TRACON Johnson Controls HVAC system project.

OIG verified that (b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c " **(Attachment 4)**
State records show the business was incorporated on May 19, 2008, and lists (b)(6) (b)(6), (b)(7)c

To investigate this complaint, we reviewed procurement databases, websites for the two companies in question, contractor and subcontractor information pertaining to the replacement of the HVAC system, and Confidential Financial Disclosure Reports (OGE Form 450).

SYNOPSIS

We found no evidence that FAA awarded Green Solutions or Building Automation Consultants any contracts or subcontracts to install the Johnson Controls HVAC system at the Philadelphia ATCT and TRACON. Nevertheless, the reference at Building Automation Consultants' website to a "Government Project" and "FAA experience" may violate the prohibition at 5 CFR § 2635.702, regarding a federal employee using his public office for private gain or for the endorsement of any service or enterprise. Additionally, in 2013, four of the five FAA employees employed by these companies were required to submit a confidential financial disclosure report (OGE Form 450). Three of these employees failed to report their outside employment.

Also, FAA and Federal Acquisition Regulations generally prohibit contracting officers from awarding contracts to federal employees or companies owned by federal employees. We found that FAA employee (b)(6), (b)(7)c registered (b)(6), (b)(7)c company, Building Automation Consultants, on at least three websites advertising that the company is available for federal contracts. Should the company land such a contract, this may violate 48 CFR § 3.6.

DETAILS

Allegation: FAA (b)(6), (b)(7)c employees violated conflict of interest and outside employment regulations through ownership of or employment with companies awarded contracts or subcontracts for the installation of a Johnson Controls HVAC system at FAA's Philadelphia ATCT and TRACON.

FINDINGS:

A search of FAA's procurement system (PRISM) found no record of FAA awarding a contract to either Green Solutions or Building Automation Consultants. FAA did award a contract to Wilgro Services, Inc. (DTFAEN-12-00165) for the replacement of the HVAC system at the Philadelphia ATCT. The scope of work included replacing the existing communications trunk with a Johnson Controls communications trunk. FAA technician (b)(6), (b)(7)c was selected to "configure and add to the existing JCI Metasys supervisory (N1) network." A review of Wilgro's subcontractor information, however, found no evidence that Green Solutions or Building Automation Consultants acted as a

subcontractor for Wilgro. Therefore, we found no evidence that the five subject FAA employees violated federal ethics regulations regarding conflicts of interest outside employment.

As shown below, we did find that three of these employees did not, as required by 5 CFR § 2634.907(e) and Part II of OGE Form 450, report their outside employment with Building Automation Consultants or Green Solutions.

Company/Employee	OGE Form 450 Required **(Attachment 5)**	Date Form 450 Filed by Employee	Outside Employment Disclosed on Form 450	Record of Discussion with FAA Ethics Official
Building Automation Consultants				
(b)(6), (b)(7)c	Yes	2/27/13	No	No
	No	N/A	N/A	No
Green Solutions				
(b)(6), (b)(7)c	Yes	2/05/13	Yes	Yes
	Yes	1/29/13	No	No
	Yes	1/28/13	No	No

(b)(6), (b)(7)c reported (b)(6), (b)(7)c outside employment on OGE Form 450 and was advised by the regional ethics officials that the outside business did not pose a conflict or run afoul of FAA's outside employment policy.

We also found that Building Automation Consultants' website, under the "Government" tab, represents that the company has "extensive experience in Government Projects, especially in regards to the Federal Aviation Administration (FAA). Recent projects in 2013 include the Philadelphia ATCT and TRACON (Johnson Controls [HVAC system])." **(Attachment 3)** FAA employees (b)(6), (b)(7)c and (b)(6), (b)(7)c are listed on the Building Automation Consultants website as the President and Vice-President of the company. Although the company made no direct reference to (b)(6), (b)(7)c FAA employment, the website's reference to "Government Projects" at FAA, including the 2013 project at the Philadelphia ATCT/TRACON, may make it appear as if FAA endorses their company's work. Such an endorsement might violate the prohibitions of 5 CFR § 2635.702 regarding an employee using his public office for private gain or for the endorsement of any service or enterprise.

ADDITIONAL INFORMATION

FAA regional ethics officials did not have a record of any discussion with (b)(6), (b)(7) who was not required and did not file an OGE Form 450, regarding his employment with Building Automation Consultants. We found (b)(6), (b)(7) registered Building Automation Consultants on at least three websites, advertising that the company was available for federal government contracts. These websites/databases are:

1. System for Award Management (SAM), a federal government website that allows businesses to register their entity to do business with the federal government;
2. FedBidAccess (FBA), a consulting and marketing firm that assists small businesses nationwide market their products and services to the government agencies and prime vendors who purchase them; and
3. Government contract and Bid (GovCB), which gathers bid information from federal, state, county, local and municipal governments, then delivers these opportunities back to registered vendors if appropriate matches are found based on their preference settings.

FAA's Procurement Guidance T3.2.5.7 — "Contracts with Federal Employees/Business Owned by Federal Employees" and Title 48 CFR § 3.6 — "Contracts With Government Employees or Organizations Owned or Controlled by Them" generally prohibit a contracting officer from knowingly awarding a contract to a federal employee or to a business concern substantially owned or controlled by one or more federal employees. Our search of the Federal Procurement Data System did not identify any federal contracts associated with Building Automation Consultants. Nevertheless, because the company is registered on websites soliciting government contracts, should it accept such a contract, this may violate 48 CFR § 3.6.

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U.S. Department of Transportation
Office of the Secretary of Transportation

OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I13H0070401	DATE 11/1/2013
TITLE (b)(6), (b)(7)c	(b)(6), (b)(7)c	STATUS Final
VIOLATION(S): Title 49 USC Section 46312	DISTRIBUTION JRI-4 w/ Atchments (1) FAA w/ Atchments 15 & 16 US DHS/HSI w/out Attachments (1)	(b)(6), (b)(7)c 1/5 APPROVED SAC Marlies Gonzalez MTG

SYNOPSIS

The United States Department of Transportation (US DOT), Office of Inspector General (OIG), opened this cased based on a referral from the Federal Aviation Administration (FAA), Joint Security & Hazardous Materials Safety Office, (b)(6), (b)(7)c On July 29, 2013, (b)(6), (b)(7)c (b)(6), (b)(7)c transported suspected environmentally hazardous materials (HAZMAT) believe to be pesticide, in (b)(6), (b)(7)c checked baggage, on an (b)(6), (b)(7)c flight. (b)(6), (b)(7)c traveled from (b)(6), (b)(7)c with a layover at (b)(6), (b)(7)c (b)(6), (b)(7)c When (b)(6), (b)(7)c attempted to re-board for a domestic flight at (b)(6), (b)(7)c the Transportation Security Administration (TSA) discovered the HAZMAT.

During an inspection of (b)(6), (b)(7)c checked baggage at MIA, a Transportation Security Officer (TSO) noticed a strong odor from (b)(6), (b)(7)c bag. The suspected HAZMAT appeared to have been contained in a Dove Shampoo bottle that leaked inside of (b)(6), (b)(7)c suitcase. An on-scene preliminary test of the substance conducted by the Miami-Dade County Fire Rescue Department revealed the markers for the pesticide Malathion. As a result of the strong odor, five TSOs reported headaches, nausea, and abdominal pains, and two of the TSOs were transported to Jackson Memorial Hospital, Miami, FL, for extended treatment. In addition, two (b)(6), (b)(7)c (b)(6), (b)(7)c gates were closed, along with a portion of the baggage area.

Subsequent inspection of (b)(6), (b)(7)c checked bag disclosed two bags of granulated materials in plain wrapping paper with what appeared to be the handwritten word "Sevin" on them and two items concealed in wrapping paper in their original packaging. The original packages were marked "Malathion 25%."

On August 8, 2013, the Florida Department of Agriculture and Consumer Services Division of Agriculture Environmental Services (FL DoA) took the suspected HAZMAT as evidence and submitted the items to the FL DoA Bureau of Agriculture Environmental Laboratories for testing, at this request of US DOT/OIG. On September 5, 2013, US DOT/OIG requested the Pipeline and Hazardous Material Safety Administration (PHMSA), Washington, DC, review the laboratory results to determine if the substances identified were considered a HAZMAT regulated by the hazardous materials regulations (HMRs). On September 10, 2013, PHMSA advised several of the materials met the US DOT's definition of a toxic liquid or solid but their concentrations were insufficient to be classified as hazardous materials, with the exception of Malathion. However, the Malathion was only regulated in packages of more than 100 lbs.

On October 3, 2013, Assistant United States Attorney (AUSA) (b)(6), (b)(7)c United States Attorney's Office (AUSA), Southern District of Florida (SDFL), Miami, FL, declined this matter for prosecution.

This matter is closed.

DETAILS

On July 31, 2013, Assistant Special Agent-in-Charge (ASAC) (b)(6), (b)(7)c US DOT/OIG, Sunrise, FL, and (b)(6), (b)(7)c FAA, Miami, FL, met with (b)(6), (b)(7)c ASAC (b)(6), (b)(7)c examined the suspected HAZMAT held by (b)(6), (b)(7)c (b)(6), (b)(7)c agreed to maintain custody of the items until another location could be chosen. (Attachment 1)

On August 2, 2013, Special Agent (SA) (b)(6), (b)(7)c US DOT/OIG, Jacksonville, FL, contacted the FL DoA, to request assistance testing the suspected HAZMAT found in (b)(6), (b)(7)c checked baggage. On August 5, 2013, (b)(6), (b)(7)c

(b)(6), (b)(7)c

On August 2, 2013, SA (b)(6), (b)(7)c coordinated with AUSA (b)(6), (b)(7)c (Attachment 3)

On August 9, 2013, SA (b)(6), (b)(7)c coordinated the collection of the suspected HAZMAT by (b)(6), (b)(7)c (Attachment 4)

On August 13, 2013, SA (b)(6) spoke with (b)(6), (b)(7)c (b)(6), (b)(7)c regarding the suspected HAZMAT samples. SA (b)(6), (b)(7)c requested the lab not destroy any untested HAZMAT materials in the event the defendant or defendant's attorney wanted to have a lab of their choice test the materials. (b)(6), (b)(7)c advised any untested materials would be held until law enforcement gave instructions to destroy or return the materials. (Attachment 5)

On August 15, 2013, SA (b)(6), (b)(7)c received a copy of the Miami Dade Police Department (MDPD), Miami International Airport (MIA), Miami, FL, police report number (b)(6), (b)(7)c (Attachment 6)

On August 20, 2013, SA (b)(6), (b)(7)c and SA (b)(6), (b)(7)c United States Department of Homeland Security (US DHS), (b)(6), (b)(7)c interviewed the following TSOs who came in contact with the suspected HAZMAT in (b)(6), (b)(7)c checked bags:

(b)(6), (b)(7)c

On August 27, 2013, SA (b)(6), (b)(7)c interviewed (b)(6), (b)(7)c (b)(6), (b)(7)c

On August 30, 2013 (b)(6), (b)(7)c provided the laboratory results for the suspected HAZMAT. (Attachment 13)

On September 5, 2013, SA (b)(6), (b)(7)c spoke with spoke with (b)(6), (b)(7)c (b)(6), (b)(7)c and requested PHMSA's assistance to determine if the substances identified in the laboratory results were considered a HAZMAT regulated by the hazardous materials regulations (HMRs). On September 10, 2013, (b)(6), (b)(7)c (b)(6), (b)(7)c PHMSA, (b)(6), (b)(7)c Washington, DC, advised several of the materials did meet US DOT's definition of a toxic liquid or solid but their concentrations were insufficient to be classed as hazardous materials, with the exception of Malathion, which was only regulated in packages with more than 100 lbs. (Attachment 14)

On September 11, 2013, SA (b)(6), (b)(7)c informed SA (b)(6), (b)(7)c the items in (b)(6), (b)(7)c checked bags were not regulated by the HMRs and asked if (b)(6), (b)(7)c wanted the case agents to pursue

this matter. On October , 2013, AUSA (b)(6), (b)(7)c declined this matter for prosecutive consideration. (Attachment 15)

EVIDENCE LISTING

Evidence for this matter is maintained by US DHS/HSI, Miami, FL, and the FL DoA. US DHS/HSI will complete the evidence disposition for (b)(6), (b)(7)c personal affects. On October 24, 2013, US DOT/OIG requested disposition for the suspected HAZMAT held by FL DoA. (Attachment 16)

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Index of Attachments

No.	Description
1.	MOA – Other – (b)(6), (b)(7)c – July 31, 2013.
2.	MOA – Record of Conversation – (b)(6), (b)(7)c August 2, 2013.
3.	MOA – Record of Conversation – AUSA (b)(6), (b)(7)c – August 2, 2013.
4.	MOA – Meeting – (b)(6), (b)(7)c August 9, 2013.
5.	MOA – Record of Conversation – (b)(6), (b)(7)c – August 13, 2013.
6.	MOA – Document Receipt – MDPD – August 13, 2013.
7.	MOA – Interview August 20, 2013.
8.	MOA – Interview – August 20, 2013.
9.	MOA – Interview (b)(6), (b)(7)c ugust 20, 2013.
10.	MOA – Interview – August 20, 2013.
11.	MOA – Interview August 20, 2013.
12.	MOA – Interviews – US DHS/HSI – ROI #3 – August 30, 2013.
13.	MOA – Document Receipt – (b)(6), (b)(7)c August 30, 2013.
14.	MOA – Email – (b)(6), (b)(7)c September 10, 2013.
15.	MOA – Email – AUSA (b)(6), (b)(7)c October 3, 2013.
16.	MOA – Letter – AUSA (b)(6), (b)(7)c October 24, 2013.