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The Special Counsel

June 27, 2001

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-98-2117

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. §§ 1213(c) and (d) by the Honorable Hershel W. Gober, former Acting Secretary of the Department of Veterans Affairs. The report sets forth the findings and conclusions of the former Acting Secretary upon investigation of disclosures of information allegedly evidencing violations of law, rule or regulation by officials at the Department of Veterans Affairs (VA), Chicago Health Care System (CHCS), Lakeside Division (Lakeside), Chicago, Illinois.

The whistleblower, Jerry Westmoreland, a former medical supply technician, consented to the release of his name. He also provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Westmoreland's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

The Whistleblower's Disclosures

Mr. Westmoreland alleged that Joseph Moore, CHCS Director, and/or his administrative staff divided purchase card orders into smaller segments in order to circumvent the regulatory requirement to solicit competition for contracts. Mr. Westmoreland alleged that this practice was a violation of 48 C.F.R. § 13.003(c), which states: "Do not break down requirements aggregating more than . . . the micro-purchase threshold into several purchases that are less than the applicable threshold merely to . . . avoid any requirement that applies to purchases exceeding the micro-purchase threshold." As set forth in 48 C.F.R. § 13.202(a)(2), micro-purchases may be awarded without soliciting competitive quotations. However, the threshold is \$2500. 48 C.F.R. § 2.101.

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In support of his allegations, Mr. Westmoreland submitted purchase card orders in which CHCS purchased landscaping services from Braden Bros. Sprinkler Systems. Many of the purchases were for amounts just below the \$2500 micro-purchase threshold, and were made on the same day for similar services. This pattern suggested that the purchases were divided for the purpose of keeping the amount of each under \$2500. For example, on July 11, 1998, five orders just under the micro-purchase threshold were placed: (1) \$2497.81 to Braden Bros. for plants at the Medical Science Building; (2) \$2493.05 to plant annuals along the Fairbanks side of the Medical Center; (3) \$2479.88 to plant annuals along the McClure Court side of the Medical Center; (4) \$2489.10 to plant flowers along the Erie side of the Medical Center; and (5) \$2490.50 to plant annuals along the Huron side of the Medical Center.

Similarly, on February 6, 1998, there were multiple purchase card orders to Braden Bros. for the following services to the VA: (1) \$2359 for manpower to landscape on the Fairbanks side of the Medical Center; (2) \$2413 for manpower to landscape the McClure Court side of the Medical Center; (3) \$2289 for landscaping service to the Erie side of Medical Center Grounds; and (4) \$2489 for landscaping service for the Huron side of the Medical Center.

In addition, Mr. Westmoreland submitted numerous other purchase card orders in which the CHCS obtained from Braden Bros. the same kind of service on the same day at a price just below \$2500. No apparent rationale or legitimate reason was provided for dividing the services into separate purchases.

On March 16, 2000, my office referred Mr. Westmoreland's allegations to the Honorable Richard J. Griffin, Inspector General for the Department of Veterans Affairs. On July 17, 2000, the Office of the Inspector General (OIG) sent a brief response to our office stating that an OIG audit team "substantiated allegations of contract/procurement irregularities and abuse of authority against an employee and supervisor of Environmental Management Service."

The IG's report did not, however, state who specifically was involved in the irregularities or abuses; nor did it provide any additional information concerning the substantiated allegations. The report further stated that an OIG audit team received "indications that there may be an improper relationship" between a VA employee and Braden Bros. and that this portion of the case was referred to the Office of Investigations for further review.

Because the IG's investigation substantiated Mr. Westmoreland's allegations, but did not include all of the information required by 5 U.S.C. § 1213, on September 6, 2000, I referred Mr. Westmoreland's allegations to the Honorable

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Hershel W. Gober, former Acting Secretary of the VA, for a full investigation. On January 19, 2001, the former Acting Secretary's report was sent to the OSC.

The Agency's Investigation and Report

Using the information on the specific purchases described by the whistleblower, the VA OIG traced the transactions to the interior designer at CHCS Lakeside. The VA OIG then conducted an investigation at the CHCS into two allegations: (1) misuse of a government purchase card by an interior designer at CHCS Lakeside; and (2) whether the former CHCS Director was aware of any improprieties with the purchase card transactions and failed to address the matter.

The VA OIG's investigation substantiated the allegation that the interior designer at Lakeside misused the government purchase card. The VA's review showed that from April 1997 through September 1997, the interior designer obtained landscaping services in excess of the \$2500 purchase card limit by engaging in a practice of "purchase splitting." Under this practice, large purchases are broken down into separate, smaller purchase card transactions. In this case, \$12,250 worth of landscaping services were broken down into five purchases of \$2,450 each; and therefore, under the micro-purchase threshold. The report noted that "purchase splitting" is prohibited under the rules for government purchase cards.

The report also noted that in October 1997, the "purchase splitting" seemed to stop. However, questionable use of the purchase cards continued. Referred to in the report as "piecemeal purchasing," the questionable use involved multiple purchases on or around the same date, for slightly different amounts or for slightly different work. While this was not "purchase splitting," it did involve the acquisition of landscaping and landscaping services on a regular, recurring basis. The report stated that the use of a government purchase card for recurring purchases is prohibited. Government purchase cards are, instead, intended for small, non-recurring purchases. In this case, government purchase cards were used from April 1997 to June 2000, for numerous purchases of landscaping and landscaping-related services with an estimated value totaling \$169,331. The report concluded that the recurring purchasing pattern violated the government purchase card program.

In response to this investigation, the VA OIG recommended that a number of actions be taken. Specifically, the report recommended: (1) discontinuing use of government purchase cards to acquire recurring landscaping services at the Lakeside Division; (2) improving internal purchase card audit procedures and audit results reporting; (3) reducing the level of expenditures for landscaping at the Lakeside facility; (4) using standard government contracting procedures to acquire all such services in the future; and (5) appropriate counseling of employees involved in the

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misuse of the government purchase card. The report also questioned the propriety of such large expenditures for landscaping at the small Lakeside facility and of doing so without following standard government contracting procedures.

Finally, the report provided comments from the current CHCS Director. The comments noted that the following corrective measures have been taken: (1) landscaping services are no longer purchased with a government purchase card; (2) an ad hoc group has been established to review the use and management of the government purchase card program and update the facility's procedures for using government purchase cards; (3) financial and administrative responsibilities for all landscaping services have been transferred to the Engineering Service at the VA CHCS facility and both the Environmental Management and Environmental Services must provide the director with quarterly reports on landscaping expenditures at Lakeside and the West Side Division; (4) landscaping services are processed through the VISN 12 Great Lakes Acquisition Center; and (5) the employee who misused the government purchase card has been counseled against using the card improperly.

The VA OIG's investigation did not substantiate the second allegation that the former Director of CHCS was aware of the inappropriate purchasing practices and failed to review or stop them. The report states that the former Director retired in September 1998 and passed away in June 2000. According to statements provided by the interior designer's supervisor, the former Director was probably unaware of the "purchase splitting" or "piecemeal purchasing." The current Director, who took over the position in November 1999, stated that he was unaware of the purchasing irregularities. Based on the information received through the investigation, the VA OIG was unable to conclude that the former CHCS Director knew or approved of the improper use of the purchase cards.

#### Whistleblower's Comments

Mr. Westmoreland noted that the OIG report did not mention that funds were mailed to a post office box in Vernon Hill, Illinois for B.J. Enterprise but that there is no B.J. Enterprise in Vernon Hill. He also noted that Braden Bros. does not have an office in Morton Grove, Illinois and questioned who received the funds mailed to those companies. In addition, Mr. Westmoreland stated that the interior designer did not discontinue the use of the purchase card and in some cases did not use the vendor ID number which will make it difficult for the Internal Revenue Service to track the funds. Finally, Mr. Westmoreland requested a criminal investigation into these allegations and stated that he would like to be involved and provide information for such an investigation.

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Conclusion

Based on the representations made in the report and as stated above, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

As required by section 1213(e)(3), I have sent a copy of the report and Mr. Westmoreland's comments to the Chairmen of the Senate and House Committees on Veterans' Affairs. We have also filed copies of the report and Mr. Westmoreland's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures