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May 15, 2003

The Special Counsel

The President

The White House

Washington, D.C. 20500

Re: OSC File No. DI-00-2321

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 Office of the Inspector General (OIG), Department of Transportation (DOT). The report sets forth the findings and conclusions of the OIG upon investigation of disclosures of information allegedly evidencing violations of law, rule or regulation and a gross waste of funds arising out of actions by officials at the DOT, Federal Aviation Administration (FAA), Airway Facilities Service (AAF) in Washington, D.C.

The whistleblower, David Lantzy, Special Assistant, National Airspace System (NAS) Operations Program, 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.

Mr. Lantzy's allegations were transmitted to the Honorable Norman Y. Mineta, Secretary of Transportation for investigation on September 12, 2001. The Secretary delegated authority to the OIG to conduct an investigation and to review and sign the agency report. The OIG sent a report to this office on June 14, 2002. After reviewing the report and Mr. Lantzy's comments, OSC requested additional information from the OIG. On December 6, 2002, the OIG submitted the requested information to this office in the form of a supplemental report.

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

The Whistleblower's Disclosures

David Lantzy, Special Assistant, NAS Operations Program, has worked at the FAA for over 27 years. He has approximately eight years of experience in the area of FAA telecommunications contracts. Mr. Lantzy alleged that agency officials violated the FAA

Acquisition Management System (AMS)¹ and committed a gross waste of funds in connection with the award and administration of specific telecommunications contracts and task orders.

At the time when the incidents forming the subject of his allegations occurred, Mr. Lantzy was the Deputy Program Director for Telecommunications, AAF, NAS. Among his responsibilities as Deputy Program Director, Mr. Lantzy served as the team leader for FAA's Telecommunications Integrated Product Team (TIPT).² Mr. Lantzy explained that, in November 1998, TIPT determined that the agency could significantly reduce costs by "bundling," i.e. consolidating, its multiple telecommunications support contracts into one contract, known as "the FAA Telecommunications Support Contract" (FTSC). The FTSC is an Indefinite Delivery - Indefinite Quantity (IDIQ)³ contract, the total cost of which is limited to \$100 million over five years.

Mr. Lantzy was a member of the FTSC Evaluation Team, which reviewed and rated the contractors' bids, and served as the designated source selection official for the contract. From among the five companies who submitted offers, the Evaluation Team recommended that the contract be awarded to Stanford Telecommunications, Inc. (STel). Mr. Lantzy, in his capacity as the source selection official, made the final decision to award the FTSC to STel based on its "superior technical rating and reasonable cost." At the time the contract was awarded, in April 1999, STel was a small business. Subsequently, in December 1999, STel was purchased by ITT Industries (ITT).

Unitech, a small disadvantaged business, was among the four unsuccessful bidders for the contract. Mr. Lantzy advised that, in Fiscal Years (FY) 1994 through 1999, Unitech had provided telecommunications services to the FAA under annual contracts. In FY 2000, a significant amount of the work previously performed by Unitech under these contracts was scheduled to be consolidated under the FTSC. Consequently, many of Unitech's duties were scheduled to be phased out in December 1999 and January 2000, during which time ITT was gradually to assume all facets of the FTSC. In a letter to FAA management dated December 14, 1999, Unitech protested the award of the FTSC to ITT, arguing that the decision was

¹ In 1995, Congress authorized FAA to develop and implement its own acquisition management system, separate from the Federal Acquisition Regulations, to address the unique needs of the agency. The FAA AMS went into effect on April 1, 1996.

² According to the agency report, TIPT is responsible for determining the requirements and scope of FAA's telecommunications procurements and executing telecommunications contracts upon award.

³ The OIG report explains that IDIQ contracts are "structured to provide flexible means by which future work can be added as requirements are identified." They accomplish this goal by "permit[ting] task orders for required work to be written against the contract throughout the life of the contract without having to satisfy competition requirements."

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“possibly unlawful” as it prejudiced the interests of small disadvantaged businesses, such as Unitech. As a remedy, Unitech asked the FAA to award a significant portion of future telecommunications support requirements to Unitech.

Mr. Lantzy related that, on December 22, 1999, Unitech’s attorneys and representatives met with FAA officials to discuss the issues raised in the December 14, 1999, letter. Mr. Lantzy stated that he was excluded from this meeting and subsequent meetings with Unitech. In a letter dated December 23, 1999, Steve Zaidman, Associate Administrator for Research and Acquisition, reassured Unitech that “the FAA will take no action to reduce Unitech’s current level of telecommunications contract support to the agency,” pending further discussions between the parties. Mr. Lantzy alleged that Mr. Zaidman then instructed him to halt the transition of Unitech’s work to ITT.

According to Mr. Lantzy, FAA executive management held several other meetings with Unitech’s attorneys and representatives during the months of January and February 2000. Mr. Lantzy alleged that David Tuttle, a former senior executive in charge of FAA telecommunications, attended one of the meetings as a representative of Unitech.

Mr. Lantzy alleged that in February 2000, FAA management directed him to find additional work for Unitech in order to maintain Unitech’s funding level at \$10.5 million. Mr. Lantzy advised that \$10.5 million is the approximate amount Unitech would most likely have been awarded under FAA contracts during FY 2000, had the FAA not decided to consolidate under the FTSC a significant portion of the work previously performed by Unitech.

Mr. Lantzy stated that on June 6, 2000, he was instructed by his then-supervisor Thomas Gassert, former Program Director of NAS Operations, to direct a \$1.5 million task order to Unitech for unspecified work. Mr. Lantzy refused to comply with Mr. Gassert’s instructions, explaining that he believed the agency was attempting to bypass applicable contracting procedures.

Mr. Lantzy alleged that, notwithstanding his objections, the FAA subsequently awarded a \$1.5 million task order to Unitech to perform services to assist the agency in its transition from the old AT&T FTS 2000 Bridge Contract to the new MCI WorldCom FTS 2001 Contract. He contended that this award constituted an impermissible “sole-source task order” because it circumvented the competitive bidding process set forth in the FAA AMS.

Specifically, he alleged that the contract should have been competed in accordance with FAA policy articulated at section 3.2.2.2 of the AMS. He asserted that single-source selection was not appropriate because a single-source justification, as required by section 3.2.2.4, was not present. Furthermore, even if single-source selection had been appropriate under the circumstances, the agency nevertheless failed to file the necessary documentation and neglected to follow the proper procedures for single-source selection, as outlined in sections 3.2.1.3.8 and 3.2.2.4.

Mr. Lantzy further alleged that the \$1.5 million awarded to Unitech was a gross waste of funds. He explained that, under a pre-existing contract dated April 5, 2000, another contractor, MCI WorldCom, was already obligated to perform the services later tasked to Unitech. He alleged that the FAA's decision to transfer this work to Unitech was not offset by any reduction in the cost of the MCI WorldCom contract. Thus, according to Mr. Lantzy, this expenditure of \$1.5 million to Unitech was wasteful, as the agency received no benefit in return.

The Department of Transportation Investigation and Report

In the course of investigating Mr. Lantzy's allegations, the OIG interviewed Mr. Lantzy and several FAA employees, FAA contractor employees, and Small Business Administration employees; researched applicable laws and regulations; and reviewed over 500 documents. The investigation failed to substantiate Mr. Lantzy's allegations that the FAA bypassed the usual contracting procedures in order to divert certain telecommunications contract work to Unitech. The OIG did find, however, that TIPT had improperly bundled contract work previously performed by Unitech into the FTSC, causing Unitech to lose a significant portion of the work it performed for FAA. Thus, the OIG concluded that FAA was justified in subsequently awarding additional contract work to Unitech to remedy this situation.

According to the OIG report, shortly after the FTSC was awarded to STel, TIPT decided to bundle certain work being performed under other telecommunications IDIQ contracts with the FTSC, beginning in December 1999. The OIG report cites a December 2, 1999, document prepared by TIPT entitled "Consolidation of Contractor Support" as a summary of TIPT's analysis of various bundling options and recommendations for the FTSC.⁵ Some of the contract work that was bundled had previously been performed by Unitech under its two existing FAA telecommunications contracts, the Telecommunications Support Services (TISS) Contract and the Broad Information Technology Services (BITS) Contract. On December 8, 1999, the FAA notified Unitech that its entire TISS task order would be terminated on December 16, 1999. The OIG stated that the bundling action, therefore, "result[ed] in a substantial loss of work for Unitech." Unitech subsequently complained to several members of Congress that the bundling action placed small businesses at a competitive disadvantage.

The OIG found that the December 1999 bundling action did not comply with the Small Business Act (the Act), 15 USC § 631 et seq. The OIG report explains that TIPT failed to meet the Act's requirements by (1) failing to obtain the consent of FAA's approval authority

⁵ As discussed below in connection with Mr. Lantzy's comments, Mr. Lantzy takes exception to the OIG's characterization of this document.

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prior to bundling the work and (2) failing to conduct a proper market research analysis – both of which are required by the Act.⁶

Steve Zaidman, the Associate Administrator for Research and Acquisitions, testified that he has sole authority within FAA to approve bundling actions. He stated that TIPT did not seek his approval prior to bundling the contracts under the FTSC. Rather, Mr. Zaidman maintained that he was not aware of the bundling action until he learned of Unitech's objections to it in December 1999. In early 2000, Mr. Zaidman asked TIPT to provide its justification for the bundling action. Mr. Zaidman stated that, in response, TIPT submitted an analysis of the estimated cost savings, which he believes they prepared "after-the-fact." Consequently, he determined that TIPT failed to comply with the Small Business Act and directed that the bundling action be reversed.

According to the OIG report, Inez Williams, FAA's Small Business Utilization Officer, likewise determined that the bundling action did not comply with the Small Business Act due to TIPT's failure to obtain Mr. Zaidman's prior consent. In addition, the report states that the OIG "found no evidence that the TIPT, in advance of the bundling action, conducted a proper market research analysis – to include estimated cost savings – which is explicitly required by the Small Business Act."

The OIG found that, even though TIPT's bundling action violated the Small Business Act, it complied with FAA's AMS. The OIG report explains that, at the time, the AMS did not include a policy on bundling. Even so, Ms. Williams asserted that TIPT should nevertheless have been aware of, and adhered to, the requirements of the Act. The OIG report states that, partly as a result of this improper bundling, FAA established a formal contract bundling policy in November 2000.

The OIG found that, in light of the improper bundling of work under the FTSC, the FAA's decision to retain Unitech's services in the approximate amount of \$10.5 million per year through FY 2002 was justified. According to the OIG report, FAA officials met with Unitech representatives on several occasions during the winter and spring of 2000. On June 6, 2000, FAA and Unitech signed an agreement stating that FAA would continue to retain Unitech's services under existing contracts in the amount of approximately \$10.5 million per year through FY 2002 – the approximate amount Unitech had been scheduled to receive before work was bundled into the FTSC. Therefore, the OIG report concludes that, by entering into the contract, the FAA merely intended to make Unitech whole.

The OIG was also unable to substantiate Mr. Lantzy's allegation that FAA's decision to direct \$1.5 million to Unitech for FTS 2001 system transition work amounted to an

⁶ Section 644(e)(2)(A) of the Act provides "[b]efore proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified."

impermissible single-source selection. Rather, the OIG found that this assignment of work constituted a permissible directed task order under Unitech's BITS contract.⁷ Thus, the OIG found that the AMS source selection provisions did not apply.

The OIG was also unable to substantiate Mr. Lantzy's allegation that the \$1.5 million task order constituted a gross waste of funds due to a pre-existing obligation by another contractor to perform this same work under a different contract. According to the OIG report, Mr. Lantzy informed the investigators that, in an agreement between FAA and MCI WorldCom signed on April 5, 2000, MCI WorldCom had agreed to pay for FTS 2001 system transition expenses, up to \$3 million. When interviewed, Mr. Gassert, Sue Handy, Contracting Officer, FAA Office of Acquisitions, and Suzanne Stoehr, FAA Acquisition Telecommunications Specialist, advised that the \$1.5 million task order issued to Unitech was for essential additional FTS 2001 system transition work, not scheduled to be performed by MCI WorldCom.

Lastly, the OIG report states that Mr. Lantzy alleged to investigators that FAA's decision to grant additional work to Unitech caused ITT to lose work under the FTSC. The OIG interviewed ITT's FTSC Program Manager, John Kefaliotis, Vice President of Network & Transportation Systems, CSI Group, ITT, who maintained that FAA has not diverted any work from the FTSC to Unitech in order to satisfy the June 6, 2000, agreement.

The Whistleblower's Comments

Mr. Lantzy provided comments on the OIG report. Mr. Lantzy maintained that, contrary to the OIG's findings, FAA's legal and small business offices did grant prior approval for the FTSC. He further contended that the FTSC is compliant with all provisions of the Small Business Act and with FAA's bundling policy. In light of Mr. Lantzy's comments, OSC asked the OIG to clarify whether its findings regarding noncompliance pertain to contract bundling within the FTSC itself, as awarded in April 1999, (as Mr. Lantzy interpreted the findings) or whether they pertain to a subsequent bundling action. The OIG clarified that the investigation did not uncover problems in connection with the award of the FTSC itself; rather, its findings of noncompliance are limited to TIPT's decision to bundle additional work into the FTSC in December 1999.

In response, Mr. Lantzy took exception to the OIG's characterization of the December 1999 action as a separate bundling action. He contended that TIPT did not initiate a bundling action in December 1999; rather, he maintained that, at that time, TIPT merely began transitioning certain work to the FTSC that had been contemplated as being part of the FTSC

⁷ The subject of task orders, and when they should be open to competition, is discussed further in the "Whistleblower Comments" section of this letter.

from the outset.⁸ Because the transitioned work was already included in the FTSC, no bundling was necessary. Mr. Lantzy advised that TIPT took all necessary steps – including obtaining prior approval from Mr. Zaidman and conducting market research – before awarding the FTSC itself. Thus, he contended that TIPT did not violate the Act when it transitioned work to the FTSC in December 1999.

In addition, Mr. Lantzy maintained that all cost-benefits analyses necessary to support the consolidation of multiple contracts under the FTSC (including those contracts transitioned in December 1999) were conducted prior to the competition and award of the FTSC. Nevertheless, he explained that, before certain work was transferred to the FTSC in December 1999, he asked his staff to prepare the December 2, 1999, document entitled “Consolidation of Contractor Support,” as an additional measure to assure that the transfer of this work would in fact result in significant savings to FAA. He explained the purpose of this additional validation of cost savings as follows: “It is one thing to estimate cost savings of consolidating work prior to the contract award. It is another to assure the savings is achievable after the award.”

Mr. Lantzy questioned whether the additional FTS 2001 system transition work for which Unitech was paid \$1.5 million was in fact necessary. In his opinion, the OIG should have inquired into this issue further by requesting more information about the work Unitech performed. He claimed that, in doing so, the OIG would most likely have discovered that the work performed by Unitech was duplicative of that originally scheduled to be performed by MCI WorldCom at no additional cost to FAA.

Mr. Lantzy contended that the task order FAA directed to Unitech under the BITS contract as a part of the June 6, 2000, agreement, was issued improperly. Mr. Lantzy explained that Unitech was only one of several contractors pre-qualified to receive work under the BITS contract. He advised that the BITS contract provided for issuance of both “directed” and “compared” task orders.⁹ According to Mr. Lantzy, FAA is required to use a compared task order unless one of the exemptions from competition, which are enumerated in the contract, applies. Because Mr. Lantzy is not aware of an applicable exemption, he expressed his belief that FAA should have competed the new work among all of the pre-qualified contractors, rather than directing this task order to Unitech.

The OIG responded to Mr. Lantzy’s concerns about the BITS task order in a supplemental report dated December 2, 2002. In the supplemental report, the OIG presented information indicating that directing task orders, rather than competing them, is FAA’s preferred

⁸ According to Mr. Lantzy, FAA lacked the funds to transition all of the work included under the FTSC to the new contractor at once; therefore, the transition occurred in several phases, including one that took place in December 1999.

⁹ Directed task orders are issued on a single-source basis, without competition. For compared task orders, all available contractors are given the opportunity to compete for the work by submitting task order proposals.

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method of issuing task orders under IDIQ contracts. The OIG interviewed Suzanne Stoehr, FAA Telecommunications Specialist in Acquisitions, who maintained that directed task orders are the preferred and usual method of awarding tasks because they require less work. The information provided by Ms. Stoehr was corroborated by David Joyce, Acting Division Manager, FAA Business & Strategic Planning Division. He commented that any contractor receiving a directed task order has already gone through a competitive process in order to be awarded the IDIQ contract, thus, it is generally unnecessary to compete individual task orders issued under the contract.

In response to the supplemental report, Mr. Lantzy questioned the credibility and expertise of the witnesses relied upon by the OIG. He also argued that the FAA ignored cost considerations when it directed task orders to Unitech, claiming that Unitech charged a higher fee than other companies.

Conclusion

Based on the representations made in the report and as stated above, I have determined that the OIG report contains all of the information required by statute and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of the OIG report and Mr. Lantzy's comments to the Chairmen of the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure. We have also filed a copy of the report and Mr. Lantzy's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures