

06-7743



**Homeland  
Security**

January 17, 2007

The Honorable Scott J. Bloch  
Special Counsel  
Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, D.C. 20036-4505

RE: OSC File No. DI-06-0354

Dear Mr. Bloch:

This report is in response to your referral of File No. DI-06-0354, referencing allegations of gross mismanagement and a gross waste of funds. The Secretary referred this matter to the Department of Homeland Security (DHS) Office of Inspector General (OIG). The OIG initially reviewed the allegations in February 2006, and then conducted an additional investigation in October 2006. As required by 5 U.S.C. § 1213, the following is the Department's report regarding the subject allegations.<sup>1</sup>

#### Background of Investigation

Mr. Norman Prevatte, formerly with U.S. Customs and Border Protection (CBP), Marfa Border Patrol Sector, Marfa, Texas, alleged that poor contract oversight and inadequate technical specifications for checkpoint refurbishment projects resulted in thousands of dollars and man-hours spent diagnosing and repairing defective construction deliverables. He also alleged that the United States Army Corps of Engineers' (USACE) failure to adequately enforce available contract remedies related to the construction of the Sierra Blanca Station cost CBP an additional \$300,000.

During its initial review, the OIG determined that the USACE may not have adequately managed the design and construction phase of the checkpoint refurbishment project, resulting in significant problems with the quality of products and construction provided to Marfa Sector. At your request to review this matter further, we delegated this referral to the OIG to perform an additional inquiry.

#### Conduct of Investigation

In this subsequent review, the OIG attempted to determine the cause of the problems with deliverables in Marfa Sector, and whether these problems constituted gross mismanagement and/or a gross waste of funds. The OIG inspected three Marfa Sector

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<sup>1</sup> I submit this report pursuant to 5 USC § 1213(d) as the Secretary's official designee in this matter.

checkpoints and met with CBP personnel directly related to the project. The OIG also visited the USACE regional headquarters in Albuquerque, New Mexico; the USACE regional office in El Paso, Texas; and CBP Logistics Office (Logistics) in Dallas, Texas.<sup>2</sup> The OIG reviewed available documentation and inspected the checkpoints in question to determine the condition of the refurbishment projects since its last inspection in February 2006. Subsequent to the OIG's previous visit to the Marfa Sector, Marfa personnel determined that the Uninterruptible Power Supply (UPS) units installed at the checkpoints to power the canopy lights during power failures were used and the contractor replaced them at USACE's request.

### Evidence Obtained

The OIG reviewed documentation related to the construction of the Sierra Blanca Station and interviewed CBP personnel concerning the allegation that CBP incurred additional costs of \$300,000. Specifically, the complainant alleged that because the USACE failed to enforce available contractual remedies, CBP incurred an additional cost for the Sierra Blanca Station construction. The allegations were not substantiated. Both CBP and the USACE admitted that issues related to the project's scope had caused delays and confusion over costs and work the contractors were to perform. The issues involved included modifications for additional road access requiring the construction of a railroad crossing to the station and a relocation of the facility's water supply. These modifications caused an approximate 6-month delay between facility completion and CBP project acceptance and station occupation. The OIG found no evidence that this delay resulted in any significant additional cost to CBP.

CBP Logistics planned an estimated \$300,000 security upgrade at the Sierra Blanca Station that was not included in the original construction scope and was not the result of construction issues or scope modifications. In addition, the Alpine Station is installing a \$300,000 security upgrade at its station, which is similar in construction to the Sierra Blanca Station. The OIG concluded that the \$300,000 additional expense in the allegation was related to the installation of additional security requirements, and not the result of poor construction and warranty issues as alleged by the complainant.

The OIG also investigated the allegation of poor performance in the management and design of the checkpoint repair and alteration (R&A) projects. As detailed more fully below, neither the USACE nor Logistics provided adequate management of the Marfa project, which resulted in the Marfa Sector not receiving the quality of goods and services requested. Logistics planned the project and acted as a conduit between CBP and project manager (USACE). Logistics contracted with the USACE to manage the project. USACE developed project technical specifications and oversaw contractor performance.

**Logistics** - Logistics failed to provide adequate oversight of the USACE contracting functions or sufficient communication with CBP on project status. Logistics did not have

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<sup>2</sup> To distinguish between CBP Logistics in Dallas, Texas, and CBP in Marfa, Texas, this report refers to them as Logistics and CBP, respectively.

written procedures in place to manage R&A projects. Other than a reimbursable work authorization (RWA) and a basic statement of work (SOW), Logistics was unable to provide any documentation related to the Marfa project. Logistics did not track expenditures or percentage of work completed and did not submit required periodic reports to its management.

CBP initially requested generators to provide emergency power during power failures at three checkpoints under the Marfa Sector to keep the checkpoints operational. The initial budget for each of the three checkpoints was \$170,000, for a total of \$510,000. Logistics combined the checkpoint projects with a project to construct four modular buildings in the Big Bend National Park under one task order, for a total cost of \$860,000. The USACE negotiated a price of \$343,180 for construction of the checkpoints with the remaining amount applied to the Big Bend project. Because USACE had not begun construction on the combined projects, Logistics and the USACE agreed to separate the checkpoint projects from the Big Bend project in order to begin the checkpoint projects. Total checkpoint project costs, including USACE fees, totaled \$395,918, leaving a balance of \$114,082 of unspent project funds.

Although CBP initially requested generators, Logistics and the USACE developed an SOW that failed to define the type of emergency power supply to be installed. Because of this deficiency, CBP received a \$78,000 UPS system that would provide power to canopy lights for only 59 minutes. The UPS system was designed to allow CBP agents time to safely close down the station during a power failure. When CBP asked why it was receiving UPS systems instead of generators, the USACE told them that generators were too expensive. When the OIG inquired about the unspent \$114,082, a Logistics program manager responded that the funds were not used to purchase and install generators because the funds were allocated to the Big Bend project and were not available for the checkpoints. In the same interview, a Logistics branch chief stated these funds could not be used on the other project because they were allocated to the checkpoint projects. Therefore, the OIG concluded that, even within Logistics, confusion existed.

The OIG questioned the USACE about the logic of purchasing UPS systems rather than installing generators that could provide power to a checkpoint for an indefinite period of time. USACE stated that generators would cost too much and require expensive maintenance. The CBP agent who developed the original R&A request, and who is familiar with the operation of generators at other facilities, disputed the maintenance claims and said the installed UPS systems were "basically worthless."

The OIG concluded that Logistics failed to adequately manage the project because it did not verify the final technical specifications in the USACE-developed SOW. The SOW did not contain enough information for the contractors and CBP to reasonably determine what material and services were required under the SOW. The lack of management oversight and communication resulted in inefficiencies and additional potential avoidable issues.

**USACE** - The OIG concluded that USACE did not provide detailed specifications for the R&A checkpoint projects' scope and did not provide adequate management oversight of contractors. These deficiencies resulted in problems with the quality of construction deliverables and in the purchase and installation of equipment that did not fully meet CBP requirements. The SOW was not technically detailed enough to ensure that CBP received what it requested.

For example, the SOW for the emergency power source for canopy lights was stated as "Provide emergency power supply adequate to power canopy lights in the event of a power failure. Provide an Uninterruptible Power Supply for the quarter-mile sign." The USACE developed this SOW after both a USACE architect and cost estimator visited the checkpoint sites. The specification in the SOW for the emergency power supply does not state what type of power supply was needed or how long it was required to power the lights. The contractor and USACE representatives said that the UPS units installed required dedicated circuits, but that requirement was not included in the SOW. The USACE Contracting Officer's Representative (COR) for the project said that the SOW for the checkpoint projects was inferior and the overall design was poor. He agreed that the specifications for the UPS as written would permit a contractor to take financial advantage by supplying deliverables that do not adequately meet agency needs. USACE management also acknowledged that the specifications for the checkpoints were not adequate and lacked detail.

The original UPS units at the three checkpoints had operational problems upon installation. The USACE attributed these problems to the units being wired in with other equipment. The manufacturer's diagnostic test showed that defective batteries also contributed to the failure of the UPS. A USACE contractor installed replacement batteries in at least one of the units, but the problems persisted. During its visit to the checkpoints in February 2006, the OIG determined that the contractor had installed refurbished UPS units. On February 22, 2006, the OIG informed the USACE of this fact and the next day the USACE said that the contractor would replace them with new units at no cost to the government. OIG verified that the contractor installed new UPS units.

Because Mr. Prevatte alleged that contractors provided substandard construction, the OIG inspected each checkpoint. At the Alpine checkpoints (118 and 385), CBP management was satisfied with the overall refurbishment project. Mr. Prevatte's allegation referred to work accomplished at the Marfa checkpoint (67), where the contractor's deliverables were minimally acceptable. The OIG determined that the difference in the satisfaction level with the contractor's work related directly to the amount of CBP contractor oversight. CBP's limited oversight of contractor activities at the Marfa checkpoint allowed issues with the contractor's work to remain uncorrected. CBP was more involved in the supervision and control of its checkpoints and the R&A project at the Alpine checkpoints, and that location encountered fewer problems. For example, two cameras at different checkpoints had condensation problems that created foggy pictures. Management at Alpine Checkpoint 385 had their camera serviced, while management at Marfa Checkpoint 67 did not require the contractor to rectify the problem.

The OIG concluded that the work quality described by the complainant, outside of the UPS systems, was exaggerated. The oversight of these projects was the responsibility of the USACE. CBP provided more oversight at the Alpine Checkpoint and received satisfactory work, although the oversight should have been provided by the USACE. The unsatisfactory workmanship at the Marfa checkpoint resulted directly from the USACE not fully performing its management and oversight responsibilities.

The USACE's lack of oversight is highlighted by the ability of an electrical subcontractor to install discontinued refurbished UPS units rather than new units. Invoices noted the UPS units were refurbished and the contractor and the COR should have reviewed the invoices and been aware of the situation. Only when the OIG confronted the USACE with suspicions of refurbished UPS units did the USACE act on the situation. During interviews with USACE and CBP personnel, conflicting statements arose as to who knew that the UPS units were refurbished and when the problem was discovered. Documentation provided by all parties involved in the OIG's review was extremely limited, and the OIG was unable to determine why the UPS units were not replaced before its initial review in February 2006.

#### Regulatory Compliance Issues

Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Controls*, Section II, Paragraph D, Information and Communications, states, "Information should be communicated to relevant personnel at all levels within an organization. . . . It is also crucial that an agency communicate with outside organizations as well, whether providing or receiving information." Further, OMB Circular A-123, Section II, Paragraph C, Control Activities, states, "Control activities include policies, procedures and mechanisms in place to help ensure that agency objectives are met." Logistics' insufficient communication with both CBP and the USACE relating to construction issues reported to them by CBP, contributed to the delay in resolving those issues. Logistics managers admitted they had no written procedures to administer R&A projects and that they had "dropped the ball" on this project. They informed the OIG that they had only a basic flowchart for procedures and that those procedures had obviously not been followed on the Marfa project.

According to Federal Acquisition Regulation 46.104 (f), the contract administration office responsibilities shall include recommending any changes necessary to the contract, specifications, instructions, or requirements that will provide more effective operations or eliminate unnecessary costs. The USACE did not include required electrical changes to the specifications for the UPS units even though they had an architect and a cost estimator along with a contractor at the checkpoint developing the scope of the projects.

#### Action Taken

Logistics personnel said that, for the past several months, they had been working with an engineering construction firm to write SOPs for construction and R&A projects to prevent problems such as those encountered for the checkpoint projects.

Conclusion

The OIG concluded that the overall lack of project management by both the USACE and Logistics caused issues that initiated the complainant's allegations. The Marfa Sector management said that, with the installation of new UPS units, they were satisfied with the refurbishment project and had no further issues with the work. Although OIG identified problems during its review, these problems do not constitute gross mismanagement or a gross waste of funds. OIG determined that Mr. Prevatte's allegations were not substantiated, as CBP has not spent thousands of dollars and man-hours diagnosing and repairing defective construction deliverables.

Mr. Prevatte, who consented to the disclosure of his name in association with these allegations, through this disclosure, brought to light the necessity for diligent management of construction projects. Management needs to define its oversight responsibilities and implement procedures to ensure the Federal Government receives the required quality work and deliverables. Without proper management oversight, there is always the risk of contractor abuse, customer dissatisfaction, and the misuse of federal funds.

Please do not hesitate to contact my office should you require further information regarding these matters.

Sincerely,



Michael P. Jackson

Mr. Bloch:

I have today also asked CBP Commissioner Basham to make a systematic assessment of whether and to what extent this sorry episode can suggest systematic needs for strengthening contract oversight at CBP for field construction projects.

Michael