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**Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and  
Comments of the Special Counsel**

**Summary—OSC File No. DI-06-0354**

The whistleblower, Mr. Norman Prevatte, a former Facilities Management Officer, U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP), U.S. Border Patrol, Marfa Sector, Marfa, Texas, alleged that the failure of agency officials to provide oversight for construction projects refurbishing some stations in the Marfa Sector led to significant increased costs to the agency and use of agency man-hours to correct the deficiencies. After an investigation by DHS Office of Inspector General (OIG), the agency concluded that inadequate management led to the problems Mr. Prevatte disclosed and that the agency must improve its management and oversight of construction projects and contractors to prevent misuse of government funds. The agency ultimately concluded that even though the investigation identified some important issues, there was insufficient information to warrant a finding of gross mismanagement or a gross waste of funds. Thus, the allegations were not substantiated.

**The Whistleblower's Disclosures**

The Marfa Sector covers approximately 135,000 square miles of land in Oklahoma and Texas. Marfa Sector includes border checkpoints<sup>1</sup> and four interior stations. Mr. Prevatte's allegations involved refurbishment projects at the Marfa, Alpine and Sierra Blanca station checkpoints.

DHS through CBP in Marfa contracted with the United States Army Corps of Engineers (USACE) to provide oversight for refurbishment projects planned for the Alpine, Marfa and Sierra Blanca stations. CBP was to oversee USACE. Mr. Prevatte, who consented to the release of his name, alleged that DHS officials did not properly manage USACE in its role as contract overseer for the Marfa Sector checkpoint refurbishments. As a result, he maintained, CBP needlessly spent approximately \$300,000 and considerable man-hours diagnosing and repairing defective construction deliverables. As Facilities Management Officer, Mr. Prevatte had the opportunity to observe first-hand the lack of contract oversight, design and implementation during the refurbishments in the Marfa Sector. This conduct, he maintained, constituted a gross waste of funds and gross mismanagement on the part of DHS and USACE.

Specifically, Mr. Prevatte alleged that the lack of DHS oversight and USACE's failure to properly carry out all aspects of its contracting responsibilities for the Marfa Sector refurbishment led to poorly built and unacceptable construction deliverables. He provided examples of some problems attributable to contract oversight deficiencies. Those problems were: the installation of used, non-functioning Uninterruptible Power Supply (UPS) equipment;

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<sup>1</sup> U.S. Border Patrol checkpoints are generally 25-75 miles inland from the border.

the failure to design and contract for the electrical infrastructure necessary for the UPS equipment to function properly; the construction of a concrete roadway that cracked within two months of being poured; the creation of office workspace out of countertops and cabinets appropriate for a residential kitchen; and the installation of a camera system that did not provide adequate images or coverage.

### **The Report of the U.S. Department of Homeland Security**

On February 2, 2006, OSC requested that DHS OIG assist OSC in determining if there was a substantial likelihood of wrongdoing in the present case. In response, the OIG conducted a "quick review" of the allegations and found that CBP Marfa Sector had encountered significant problems with the quality of products and construction deliverables by USACE contractors. The review also noted that the USACE contracting function needed improvement. Based on this review and the OIG's conclusion that there may be other issues not identified in the quick review, Mr. Prevattt's allegations were referred to the DHS Secretary under 5 U.S.C. § 1213 for a more complete investigation.

The Secretary delegated responsibility for the investigation to the OIG. During the course of the investigation, OIG staff inspected the three Marfa Sector checkpoints at issue located at the Sierra Blanca, Alpine and Marfa stations, and met with CBP personnel. OIG staff also visited the USACE regional headquarters in Albuquerque, the regional office in El Paso as well as the CBP Logistics Office (Logistics) in Dallas. The investigation included a review of documentation and inspection of the checkpoints to assess the projects since the inspection of February 2006.

After the OIG's inspection, Marfa Sector personnel had determined that the USACE contractor had installed discontinued refurbished UPS units at the checkpoints instead of new units. The UPS units are used to power to the checkpoint canopy lights during power failures. After the OIG informed USACE that the UPS units were refurbished, the contractor installed new UPS units at no cost to the government.

The investigation did not substantiate the allegation that CBP Marfa Sector incurred \$300,000 in additional costs for the Sierra Blanca Station construction due to USACE's failure to enforce available contract remedies. The report notes that officials at both CBP and USACE admitted that issues regarding the scope of the project resulted in delay and confusion over costs and the exact work the contractors were to perform. The confusion involved modifications for additional road access which required relocating the water supply and the construction of a railroad crossing at the stations. However, the report points out that the approximate 6-month delay did not result in significant additional cost to CBP. The OIG attributed the \$300,000 in additional expense disclosed by Mr. Prevattt to a security upgrade at the Sierra Blanca station, which was not included in the original construction plan. The report notes that the Alpine Station is installing a similar security upgrade.

The report explains the relationship among the different groups as follows: Logistics planned the station refurbishment project and contracted with USACE to manage the

construction. Logistics served as the conduit between CBP Marfa Sector and USACE. USACE developed the technical specifications and oversaw the contractors.

The investigation determined that Logistics did not have written procedures in place necessary to manage checkpoint repair and alteration projects (R&A). Logistics did not track expenditures, or work completed, nor submit the required periodic reports to management. Additionally, the report finds that Logistics failed to provide oversight of USACE contracting and failed to communicate with CBP Marfa Sector on project status. In particular, the report notes that Logistics did not review and verify the technical specifications in the Statement-of-Work (SOW) developed by USACE. As a result, the SOW did not include sufficient detailed information for contractors and CBP to ascertain what materials and services were required. This lack of management oversight and communication resulted in inefficiencies and confusion regarding the use of funds and equipment best suited to the needs of the stations.

With respect to USACE's performance, the OIG determined that USACE did not adequately oversee the management of contractors, nor did it provide the specifications necessary in the SOW for the scope of the checkpoint R&A to be clear. This lack of oversight and information resulted in poor construction quality and the installation of substandard equipment which did not meet CBP's requirements.

In particular, the report notes that the SOW for the emergency power supply for the canopy lights did not state what type of power supply was needed and how long it would be required to power the lights. This led to confusion over what type of circuitry was needed for the checkpoints. The contracting officer's representative from USACE acknowledged that the vague language of the SOW allowed the contractor to take advantage of the situation by installing discontinued refurbished UPS units at the checkpoints. As stated previously, those units were replaced after the OIG's inspection in February 2006.

Mr. Prevatte also alleged that the contractors' work was substandard. The OIG's inspection of the checkpoints revealed that CBP management at the Alpine checkpoint was satisfied with the work while CBP officials at the Marfa checkpoint found the work minimally acceptable. The report attributes the difference in satisfaction to the level of CBP management oversight during the construction. While USACE was responsible for contract oversight, the report notes that because CBP officials at Alpine Station provided more oversight themselves, they were more satisfied with the quality of the work than CBP officials at the Marfa Station. The report is careful to point out, however, that the unsatisfactory workmanship at the Marfa Station was a direct result of USACE's failure to provide management and oversight of the construction.

In conclusion, Logistics' failure to communicate with CBP Marfa Sector and USACE on construction issues contributed to the delay in addressing those issues. Additionally, Logistics personnel acknowledged the lack of written procedures for checkpoint R&A projects and that they "dropped the ball." Finally, the report found that neither Logistics nor USACE provided proper oversight which resulted in Marfa Sector not receiving the quality of goods and services requested.

### Actions Planned or Taken by DHS

In recent months, the Logistics staff has been working in consultation with an engineering construction firm to draft standard operating procedures (SOPs) for construction and R&A projects. The SOPs will be used to prevent problems such as the ones discussed in the report from reoccurring. DHS Deputy Secretary Michael P. Jackson also noted that on January 17, 2007, he asked CBP Commissioner Basham to determine how and to what extent this case can suggest systemic changes needed to strengthen contract oversight for field construction projects at CBP.

### Conclusion

Significantly, the report acknowledged an overall lack of project management by USACE and Logistics as disclosed by Mr. Prevatte's. The report credits him with bringing to light the importance of and need for "diligent management of construction projects." The report found that management needs to define oversight responsibilities and procedures so that the government receives the contract deliverables needed. Without proper management oversight, the report notes that there is a risk that projects will suffer from contractor abuse and customer dissatisfaction and that federal funds will be misused.

Notwithstanding the problems with contractor oversight and construction identified in the investigation, the OIG ultimately concluded that the poor quality of work, except for the UPS systems described by Mr. Prevatte, was exaggerated. CBP did not spend thousands of dollars or man-hours diagnosing and repairing defective construction deliverables as alleged. Rather, the report highlighted deficiencies in project management and oversight responsible for confusion and delays. The installation of the new UPS units in the Marfa Sector stations satisfied management's concerns with the quality of the work. Thus, OIG determined that the facts and circumstances of the situation did not warrant a finding of gross mismanagement or a gross waste of funds.

### **The Whistleblower's Comments**

Mr. Prevatte explained that he has 28 years of experience with the Department of Defense as a combat arms branch soldier and later as a logistician with the USACE 416<sup>th</sup> Engineer Command in Chicago. He stated that, in his opinion, the Marfa Sector Chief viewed his department as a hindrance. He attributed the \$300,000 figure to an estimate of the repairs necessary at the Sierra Blanca station. Mr. Prevatte was given that estimate after a physical security inspection by an inspector from Logistics. However, he notes that the cost of the repairs and modifications was not captured because there was insufficient time to do so given the amount of work that had to be accomplished.

Mr. Prevatte states that the problems with the checkpoint repair and alteration projects were the primary reason he came to OSC with his disclosure. He reports that he was asked to attend a contracting officer's technical representative meeting by his supervisor. It was at this meeting that he reviewed the statement of work and found that it lacked the technical specification

necessary for the proper installation of cameras, the quality of concrete work and standards of construction. He also noted that the agency suffers from organizational problems. In particular, he commented that there was no process of documentation and no standard operating procedures. To address some of his organizational concerns, Mr. Prevatte immediately installed a Facility Work Request system, after he began work at Marfa sector, to document maintenance work. He eventually developed an internal SOP for the maintenance team. This SOP later served as a resource for National Guardsmen when they worked with the agency.

Mr. Prevatte points out that at Marfa sector he was not allowed to talk to or consult with the Contract Officer at Logistics, even though it was part of his position description. He found this restriction on communication to be another failing of Logistics' management. He commented that he found USACE an inadequate organization and one he was ashamed of given his previous service to the organization. He found it disconcerting that any negative comment about USACE was met with a stern reprimand, rather than a review of the issue identified. Finally, he cautioned that without competent oversight, problems with the quality of goods and services received will continue.

### **Conclusion**

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