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The Special Counsel

September 18, 2019

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

Re: OSC File No. DI-17-3283

Dear Mr. President:

I am forwarding to you a report from the U.S. Department of the Army (Army) based on disclosures of wrongdoing at the U.S. Mission and Installation Command (MICC), Fort Rucker, Alabama. The whistleblower, [REDACTED], who consented to the release of his name, disclosed that MICC employees engaged in conduct that may constitute gross mismanagement and a gross waste of funds. I have reviewed the agency reports and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the reports, the whistleblower's comments, and my findings.¹

[REDACTED], U.S. Army Material Command (AMC) Contracting Representative (COR), disclosed that the former MICC Director failed to reacquire six fuel trucks, purchased with agency funds, from Primus Solutions, Inc. (Primus), a private company, notwithstanding recommendations from AMC, U.S. Army Sustainment Command (ASC), or U.S. Army Contracting Command (ACC) personnel to do so. [REDACTED] asserted that the failure to reacquire these vehicles would result in a loss of approximately \$1.18 million for the Army.

The agency partially substantiated [REDACTED] allegations. The investigation determined that the original Contracting Officer (CO) failed to follow proper contracting procedures and provide adequate documentary support to justify the vehicle purchase and protect the government's interest. The report further concluded that the CO's actions were not part of the original scope of this contract, which contributed to the agency's inability to quickly uncover and correct the error. The report stated that the potential loss incurred by the agency was approximately \$1.34 million.

Additionally, the investigation found that the former MICC Director did not take formal action to reacquire the vehicles, despite the concerns of several agency employees from ASC and ACC who identified the ownership issue and recommended that the fuel trucks be returned to the government. However, the report concluded that the former MICC Director did not act unreasonably in the circumstances, because contract modifications and

[REDACTED] allegations were referred to then-Acting Secretary of the Army Ryan D. McCarthy for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The investigation was conducted by the U.S. Army Contracting Command. Assistant Secretary of the Army for Acquisition, Logistics, and Technology Bruce D. Jette was delegated the authority to review and sign the report.

The President
September 18, 2019
Page 2 of 2

poor record keeping of the original CO created significant confusion and uncertainty about what was purchased and the rights of the contracting parties.

In response to the investigative findings, the agency implemented a series of corrective actions, including instructing the current CO to take appropriate steps to reacquire the six fuel trucks, conducting a thorough property and financial audit of the existing contract, and retraining the personnel involved in the Primus contract, specifically the former CO.

In a supplemental report to OSC, the agency advised that the current CO had taken steps to obtain ownership and title of the six fuel trucks. After attempting to resolve the matter by informal means, the CO issued a final decision (COFD) letter to Primus on December 4, 2018. In a letter dated December 10, 2018, Primus acknowledged receipt of the COFD but disputed the agency's position and advised that if the agency did not rescind the COFD, it would appeal in accordance with the Contract Disputes Act of 1978. Primus failed to take the actions required by the COFD and filed a notice of appeal with the Armed Services Board of Contract Appeals (ASBCA) in February 2019. The agency advised that it will continue to pursue an appropriate resolution of this matter at the ASBCA.

In his comments, [REDACTED] disagreed with the investigative conclusion that the former MICC Director was not responsible for the problems related to the contract. However, the agency advised that the former MICC Director left his position in March 2018 and is no longer employed by the Army.

I have reviewed the original disclosure, the agency reports, and the whistleblower's comments. I thank [REDACTED] for bringing forward these allegations, as the agency is now attempting to reacquire \$1.34 million in government assets. I also commend the agency for its thoroughness in resolving this matter.

For these reasons, I have determined that the report meets the statutory requirements, and the findings appear reasonable. As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency reports to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed redacted copies of these documents and the referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures