



By Email

Special Counsel Henry J. Koerner
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

March 9, 2023

**Re: Whistleblower Comments on Review of U.S. Agency for Global Media
Management Misconduct Between June 2020 and January 2021**

Dear Special Counsel Koerner:

We, Government Accountability Project, represent whistleblowers who filed complaints with the Office of Special Counsel (OSC) regarding misconduct by political appointees who served as senior managers at the US Agency for Global Media (USAGM) during the final six months of the Trump Administration, from June 2020 through January 2021. This letter provides comments from two of our clients on the 145-page Report by the Independent Review Team retained by USAGM and finalized in February 2023, *Review of Management Actions, June 2020 – January 2021* (the Report).

We believe many of the Report's findings are reasonable. The Report's catalog of confirmed misdeeds is impressive – indeed, startling. Notably, it finds: (i) *three* separate instances where Michael Pack, USAGM's then-Chief Executive Officer (CEO), and his political appointees violated *laws, rules, or regulations*; (ii) *four* separate instances where CEO Pack *abused his authority*; (iii) *two* separate instances of *gross mismanagement*; (iv) *one* instance where CEO Pack caused *gross waste of taxpayer funds*; and (v) that CEO Pack repeatedly “*took actions that were inconsistent with the statutory mandate that he respect the networks’ journalistic independence and integrity*” We concur and express our appreciation to OSC, USAGM and the Independent Review Team for their considerable efforts.

However, the Report is by no means exhaustive. Further investigation and analysis of leads provided by our clients and other whistleblowers would likely show that CEO Pack and his political enablers committed *additional* acts of misconduct including additional violations of laws rules and regulations, additional abuses of authority, additional acts constituting gross mismanagement, gross waste of taxpayer monies and danger to public health and safety.

For example, on behalf of whistleblowers who have chosen to remain anonymous we made four disclosures to the Congress, OSC and the Department of State Office of Inspector General (OIG) regarding CEO Pack's improper retention of a large private law firm, McGuireWoods, to investigate career employees he attempted to terminate.¹ The Independent review Team agreed and made five key findings:

- **The hiring of McGuireWoods constituted gross mismanagement and a gross waste of funds.**
- **The statutory authority used to award the McGuireWoods contract was problematic.**
- **CEO Pack's oversight of the McGuireWoods contract was lax and ineffective, increasing the risk of waste.**
- **Work contracted to McGuireWoods could have been performed by federal employees.**
- **The award to Consilio to support the McGuireWoods investigation was also irregular, and oversight was ineffective.**

We believe that the foregoing – along with the information provided in our disclosure letters – violates additional laws, rules and regulations. In our June 1, 2021 letter to OSC,² for instance, we pointed out that the evidence shows that CEO Pack used an “absurd” document purporting to justify the hiring of McGureWoods: a two-page after the fact memorandum between two of his political appointees relying on a “catch all” exemption to Federal Acquisition Regulations (FAR) which require competitive bidding on all federal contracts.

The Independent Review Team concurred, calling the memorandum's statutory authority “problematic.” It was more than that. They found that the two-page memorandum contained no analysis or supporting evidence, Report at 114, that the “catch all” exemption did not apply as a matter of law and policy, *id.*, and that USAGM's own Senior Procurement Executive was sound

¹ The letters were submitted on **January 19, 2021** (available at <https://whistleblower.org/wp-content/uploads/2021/01/Government-Accountability-Project-Whistleblower-Disclosure-Regarding-Gross-Waste-by-USAGM-1-19-2021..pdf>), **March 4, 2021** (available at <https://whistleblower.org/wp-content/uploads/2021/03/2021-03-04-Govt-Accountability-Project-Disclosure.pdf>), **March 18, 2021** (available at <https://whistleblower.org/wp-content/uploads/2021/03/2021-03-18-Govt-Accountability-Project-Disclosure.pdf>), and **June 1, 2021** (available at <https://whistleblower.org/wp-content/uploads/2021/06/2021-06-01-Govt-Accountability-Office-Supplemental-Whistleblower-Disclosure.pdf>).

² Available at <https://whistleblower.org/wp-content/uploads/2021/06/2021-06-01-Govt-Accountability-Office-Supplemental-Whistleblower-Disclosure.pdf>

in determining, when later interviewed by the Independent Review Team, that no FAR exemption applied and that “he would not have been comfortable approving it (had he been consulted).” *Id.* This strongly suggests that the McGuireWoods contract was based on material misrepresentations and omissions.

Similarly, in our March 18, 2021 letter,³ we pointed out that on-going oversight of the contract was non-existent. McGuireWoods records, posted on the USAGM FOIA website,⁴ show that for the four months ending November 30, 2020, the law firm invoiced USAGM for 5,093 billable hours at an average rate of approximately \$320 per hour. The records further show that nearly 3,000 hours were billed for “document production” alone.

The Independent Review Team noted, based on a separate OIG report they relied upon,⁵ that no federal contracting officer reviewed or approved any invoices. They wrote that “[f]inancial management problems were exacerbated by the failure of McGuireWoods to perform its obligations under the contract,” Report at 116, and that contracting officials who subsequently reviewed the invoices were “shocked” by the amount by which they exceeded the amounts obligated. *Id.*

The foregoing is powerful evidence that the McGuireWoods contract reeked to high heaven. Accordingly, we request that, if not yet done, OSC refer this matter to the Department of Justice for further investigation.

Thank you.

Very truly yours,

/s/

David Z. Seide

GOVERNMENT ACCOUNTABILITY PROJECT

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³ Available at <https://whistleblower.org/wp-content/uploads/2021/03/2021-03-18-Govt-Accountability-Project-Disclosure.pdf>.

⁴ Available at https://www.usagm.gov/wp-content/uploads/2021/03/McGuire-Woods-Part1_Redacted.v2.pdf, and https://www.usagm.gov/wp-content/uploads/2021/03/McGuire-Woods-Part-2_Redacted.pdf.

⁵ *Targeted Inspection of the U.S. Agency for Global Media: Editorial Independence and Journalistic Standards and Principles*, No. ISP-IB-23-01 (Oct. 2022), available at <https://www.oversight.gov/sites/default/files/oig-reports/DOS/ISP-IB-23-01.pdf>.