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September 29, 2010

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

Re: OSC File No. DI-08-2096

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel is forwarding to you agency reports concerning disclosures from a whistleblower at the Department of Defense (DOD), Defense Technical Information Center (DTIC), in Fort Belvoir, Virginia. Mr. Russ Daul, who consented to the release of his name, was the former Director of the Resource Management Directorate at DTIC. Mr. Daul disclosed that employees were improperly using the fees collected for Information Analysis Center (IAC) programs for DTIC functions and activities that are unrelated to the IAC programs. He also alleged that DTIC employees failed to report the IAC monies and implemented faulty policies to justify their misuse of the funds. He asserted that the actions of these employees constituted a violation of law, rule, or regulation, gross mismanagement, and an abuse of authority.

Mr. Daul's allegations were referred to the Honorable Robert M. Gates, Secretary, DOD, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On October 9, 2009, the Secretary submitted a report to this office. On June 7, 2010, OSC received a supplemental report from the agency. On July 19, 2010, OSC received a second supplemental report from DOD. Mr. Daul declined to provide comments on the reports. As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the reports to you.

The Office of Inspector General (OIG), DOD, investigated this matter. Mr. Daul's allegations were substantiated in part. In its investigation, OIG concluded that DTIC violated the Economy Act, 31 U.S.C. § 1535, and augmented its budget. DTIC improperly charged indirect costs for the goods and services it provided to DOD organizations and other customers in fiscal years (FYs) 2007 and 2008. DTIC collected fees in excess of its actual costs and did not return the surpluses to its customers. As a result, DOD overcharged its customers by \$12.1 million in FY 2007 and \$9.7 million in FY 2008.

As a result of these determinations, DTIC established an IAC Reimbursable Review Board (Review Board) on February 24, 2010. Among other functions, the Review Board will:
1) establish a process for creating a fixed reimbursable rate for each fiscal year and provide the details and justification for the rate; 2) obtain written concurrence from the DOD General

Counsel that the plan is consistent with legal requirements; 3) establish a plan for determining and returning surplus fees, and; 4) establish a timeline for submitting documentation to DOD regarding the collected reimbursable fees and the actual costs incurred so that a comparison can be made. The Review Board is also responsible for coordinating a review of budgeting method models for DTIC and the IACs to ensure the most effective structure is in place for the current DTIC mission and its compliance with all existing laws and regulations. In addition, DOD regulation 7000.14-R, "DOD Financial Management Regulation," (DOD FMR) chapters one and three will be updated to clarify when a DOD organization, performing under the Economy Act authority, is permitted to charge indirect costs to other DOD organizations. On September 9, 2010, DOD informed OSC that an exhaustive review is being conducted to clarify policy procedures for inclusion in the DOD FMR. DOD was unable to provide an anticipated completion date.

Moreover, the OIG investigation determined that DTIC did report total reimbursables in the Budget Estimate Submission (BES) and the President's Budget (PB) and that DTIC was not required to report reimbursable fees separate from the total reimbursables in the BES and PB. As a result, the DOD FMR will be updated to require organizations to report reimbursable fees within reimbursable authority. Furthermore, the Chief Financial Officer will review DTIC reports detailing the calculation of the reimbursable rate and the periodic comparisons of the collected reimbursable fees to the actual costs and determine whether any adjustments are necessary. DOD informed OSC that it is currently examining these revisions to the DOD FMR and was unable to provide an anticipated completion date.

The OIG investigation partially substantiated Mr. Daul's allegation that DTIC failed to report the IAC monies in the Select and Native Programming Information Technology System (SNaP-IT) and the DOD Comptroller's Executive Dashboard (CED). It was determined that SNaP-IT does not require or allow users to report such expenditures and that DTIC was not required to report the information to CED. In order to ensure proper reporting a study will be conducted to determine the extent to which Defense agencies use reimbursable fees to fund information technology expenditures without reporting the spending to the Office of Management and Budget and correct any reporting problems. Waivers will be requested when the amounts are immaterial. DOD informed OSC that the study will be conducted during FY 2011 in order to ensure that the most accurate data is provided by reporting agencies.

The report also found that the actions of Mr. R. Paul Ryan, former Administrator, DTIC, in administering DTIC's collection and use of IAC fees constituted gross mismanagement, but did not constitute an abuse of authority. It was determined that Mr. Ryan was aware of and assented to the continued practice of improperly accounting for the IAC fees and did not establish a systematic process to accumulate actual costs. In addition, he did not take action to correct DTIC's IAC fee policy problems when notified about the issues. As a result of the investigation, Mr. Ryan was detailed from the DTIC Administrator position to a non-supervisory position in another unit. "He will not return to DTIC, but will be reassigned to a position outside of DTIC . . . [W]e plan to advertize the DTIC Administrator position to locate a highly qualified candidate to lead this organization." Furthermore, the Director of Defense Research and Engineering has begun a comprehensive review of DTIC operations, to include a full assessment

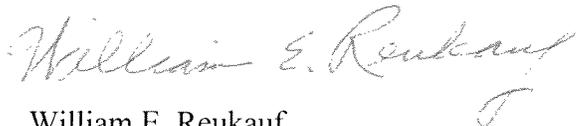
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of its financial accounting system, and plans to address the deficiencies identified by the OIG investigation.

We have reviewed the original disclosure and the agency's reports. Based on that review, OSC has determined that the agency's reports contain all of the information required by statute, and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), we have sent copies of the agency's reports to the Chairmen and Ranking Members of the Senate Committee on Armed Services and the House Committee on Armed Services. We have also filed copies of the reports in our public file, which is now available online at www.osc.gov, and closed the matter

Respectfully,

A handwritten signature in cursive script that reads "William E. Reukauf". The signature is written in dark ink and is positioned above the printed name.

William E. Reukauf
Associate Special Counsel

Enclosures