



**U.S. OFFICE OF SPECIAL COUNSEL**

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March 8, 2011

The President  
The White House  
Washington, DC 20500

Re: OSC File No. DI-09-0222

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by Robert M. Baggan, former employee of the United States Department of State (DOS), Bureau of Overseas Building Operations (OBO), Washington, D.C. Mr. Baggan, who consented to the release of his name, alleged that DOS employees failed to provide proper oversight of costly contracts overseas, specifically the construction of the United States Embassy in Managua, Nicaragua (Embassy Managua), and the installation and maintenance of air conditioning systems at 80 embassies worldwide.

On June 12, 2009, Mr. Baggan's allegations were referred to the Honorable Hillary Rodham Clinton, Secretary of State, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Clinton delegated authority to the Honorable Patrick F. Kennedy, Undersecretary of State, who submitted a report with sensitive but unclassified information on March 9, 2010, and a report for public release on September 29, 2010.<sup>1</sup>

In August 2007, Mr. Baggan disclosed that he was tasked to review a substantial number of overseas construction projects by the Honorable Charles Williams, OBO Director, including analyses of construction challenges associated with building the new embassy in Managua and air conditioning system chillers, which are products made by the York Products Division of Johnson Controls, Inc., York, Pennsylvania (York Chillers). Mr. Baggan alleged that employees had improperly issued Certificates of Substantial Completion and payments to Zachary Construction Company, a contractor, for building an embassy complex in Managua, even though construction was incomplete. Mr. Baggan also disclosed information that employees failed to hold the York Chillers contractor responsible for the installation of defective York Chillers at 80 embassies worldwide. In addition, he alleged that DOS failed to take appropriate steps to address serious contract violations and irregularities, resulting in the misuse of government

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<sup>1</sup> DOS provided the Office of Special Counsel (OSC) with a revised report for public release which substituted duty titles for employee names referenced therein. DOS cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. §552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to DOS's use of the Privacy Act to remove the names of employees on the basis that the application of the Privacy Act in this manner is overly broad.

funds. Thus, Mr. Baggan alleged that employees' failure to oversee construction contractors constituted a violation of law, rule or regulation, gross mismanagement, and a gross waste of funds.

Following an investigation, the agency did not substantiate Mr. Baggan's allegations. The investigation did not uncover any evidence that: (1) employees improperly issued the Notice of Completion for the construction of Embassy Managua on July 18, 2007; (2) employees failed to monitor and provide oversight to the Embassy Managua construction project; and (3) employees failed to hold the contractor accountable for all the building requirements specified in the contract. The agency report stated that throughout the construction process, DOS employees supervised the contractors' work and held them responsible for defective or unfinished work. All work was completed and a punch list was prepared to ensure that all questionable items were fixed, corrected, or replaced prior to employees taking occupancy of Embassy Managua.

The Project Director signed the Notice of Completion on July 18, 2007, with concurrence from her direct supervisor, the Senior Project Executive. The Project Director has the discretion to issue a Notice of Completion at her discretion, but made the decision together with her supervisor. The Senior Project Executive confirmed that all the major building systems were installed, tested, and certified. In addition, the issuance of the Notice of Completion did not prevent the DOS contracting officer from assessing liquidated damages. The contracting officer, on the advice of the Project Director, however, did not assess damages because any delays to the project were the result of government-issued change orders and modifications.

The Senior Project Director acknowledged, however, that there were "glitches" in several building systems, including sewer, fire alarm, power monitoring, and lightning protection. In response to Embassy Managua facility staff complaints, OBO employees, including Mr. Baggan, traveled to Embassy Managua in August 2007, to assess the readiness for occupancy. For example, OBO determined that although the sewer system was complete, contractor-led training on the sewer system was not done; OBO did not previously witness the testing of the water treatment plant; wiring was not completed fully; and the lightning protection system needed a missing part, which was scheduled to arrive the week of the OBO assessment. The OBO team, including Mr. Baggan, identified numerous punch list items, including systems maintenance and incomplete training requirements. However, the Senior Project Director stated that the embassy was ready for occupancy and, as a result, the Notice of Completion had been issued properly. The Senior Project Director added that some systems require occupancy before they can be adjusted and ultimately function properly. While the investigation determined that there was disagreement among Embassy Managua staff and OBO officials in Washington, D.C., about whether the Notice of Completion should have been issued and when the embassy was ready for occupation, individuals involved with the project agreed that Embassy Managua was completed in November 2007.

The agency report also determined that OBO officials could have better managed the installation and management of the air conditioning systems (chillers) at 80 embassies worldwide, "possibly by improving communication between different branches..." Nonetheless, the agency report stated that OBO officials took significant steps to address the various problems

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with York Chillers, Inc., the subcontractor responsible for the chillers, during the 2005-2007 timeframe, including securing a five-year warranty on the chiller compressors. Because of the difficulties that arose from the water-cooled air conditioning systems, particularly in Africa, OBO decided to approve only air-cooled chillers from 2007 onward.

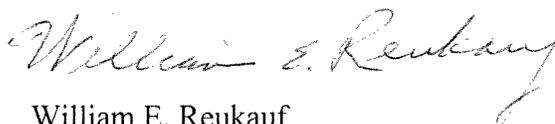
In addition, the investigation found that the contractor did not improperly substitute products. OBO officials approved and "accepted" the chiller systems at embassies after construction was complete. Furthermore, the agency report stated that two general contractors would have no financial motive to install one type of chiller system over another as the cost differential of procuring and installing water-cooled chillers versus air-cooled systems was not substantial.

Pursuant to 5 U.S.C. § 1213(e), Mr. Baggan had the opportunity to review and comment on both the sensitive but unclassified report and the agency's report for public release. On January 22, 2011, he informed us that he declined to submit comments on the agency reports.

OSC has 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 that 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 Foreign Relations and the House Committee on Foreign Affairs. Copies of the sensitive but unclassified report and the report submitted for public release are transmitted for your convenience. OSC has also filed a copy of the agency's report submitted for public release in our public file, which is available online at [www.osc.gov](http://www.osc.gov) and closed this matter.

Respectfully,



William E. Reukauf  
Associate Special Counsel

Enclosures