



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111
January 31, 2012

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation— Whistleblower
Investigation—Intelligence and Security Command
(INSCOM), Fort Belvoir, Virginia (Office of
Special Counsel File Number DI-11-2122)

Dear Ms. McMullen:

The following information is provided in response to your January 4 and 19, 2012 requests for additional information supplementing the Army report submitted to the Office of the Special Counsel on December 16, 2011 in order to determine whether the Army has taken the necessary steps to correct the wrongdoing substantiated in the report. Your questions centered around the following matters: (1) the Army's recommendation that the INSCOM Contracting Officer initiate negotiations with Silverback 7 to collect overpayments, and that the appointing authority direct INSCOM contracting personnel to recoup advance payments for which no product or services were received. You indicated that the Army report did not clearly lay out the dollar amounts involved, the timeline and method for recoupment, and the likelihood of repayment; (2) it did not appear that any disciplinary action was taken against the employees who engaged in the gross mismanagement that led to the execution of the contracts, including Mr. Mancini. You inquired as to whether any disciplinary action is planned, and if none is planned, why not; and (3) it had come to your attention that the fill rate on the contract with Silverback for Option Year 1 is the same as before: 90%. Since the contract is firm-fixed-price (FFP), you stated that this means that once again, the full amount of the contract will be paid up front to Silverback, regardless of how many positions they fill. You asked that we advise whether changes to Option Year 1 are forthcoming.

Below is a status update on your questions and additional matters that INSCOM has addressed in response to the findings, conclusions, and recommendations contained in the Army report. Mr. Darell Lance, INSCOM Chief of Staff, appointed a team of senior subject matter experts to assess the investigating officer's report concerning the whistleblower complaint that employees of INSCOM violated laws, rules and/or regulations and engaged in conduct that amounted to gross mismanagement, or abuse of authority with respect to the administration and oversight of three government contracts. As a result of a thorough review of the above matters, the followings actions have or will be taken:

a. On January 6, 2012, a Flash Report was submitted to the Assistant Secretary of the Army (Financial Management and Comptroller (ASA (FM&C)) on the Avue Salary Management Module contract as a Bona Fide Needs Rule violation. In a memo dated January 13, 2012, ASA (FM&C) determined that a preliminary investigation is required. Mr. Lance appointed an investigating officer who will meet the ASA(FM&C) suspense of April 20, 2012 to complete the report. On further review of the direction from LTG Zahner, the INSCOM Resource Manager also issued two additional Flash Reports to ASA (FM&C) on January 18, 2012. INSCOM is presently waiting for the ASA (FM&C) response on these potential ADA violations, but a preliminary response from ASA (FM&C) indicates that they will combine all three Flash Reports into a single investigation.

b. On January 13, 2012, the INSCOM Contracting Officer formally notified both Silverback 7 and AVUE Technologies of the Government's intent to file a request for recoupment. The internal analysis of the recoupment costs for services with Silverback 7 is \$3,570,822 in the Base Year. The INSCOM Contracting Officer met with Silverback 7 on January 27, 2012 to open discussions for the recoupment and will have a better idea of the likelihood of repayment as it engages in substantive negotiations with the contractor. Although this was a FFP contract, INSCOM may have some leverage because Silverback 7 is currently on contract with the potential of option years in the balance. At this time, the INSCOM Contracting Officer does not intend to change the basic structure of Option Year 1 because the requirements and scope remain the same as the Base Year. Silverback 7 is currently satisfying all of the Government's requirements in the performance of this service, albeit with 43 CMEs vice the Government's original estimate of 49. Because the Government is purchasing a commercial service, a FFP contract vice cost-type contract must be used. In the Request for Proposal, the Government provided an estimate of 49 CMEs based on prior history of the acquisition in an attempt to assist the contractors in developing their proposals. In the solicitation, the Government encouraged contractors to find efficiencies that would reduce the price of the service. Performance based contracting focuses on outcome/results, not the number of CMEs it takes to produce the desired results. During Option Year 1, the Contracting Officer will continue to monitor Silverback 7's performance and notify the contractor if the Government's requirements are not being satisfied.

c. On January 13, 2012, the INSCOM Contracting Officer also formally notified AVUE Technologies of the Government's intent to file a request for recoupment. The internal analysis of the recoupment costs for services with AVUE reflects that INSCOM expended approximately \$472,000 for the Salary Management Module that it did not use. The INSCOM Contracting Officer intends to meet with AVUE prior to February 10, 2012 to negotiate an equitable adjustment in the price of this contract, seeking recoupment for a portion of the amount expended.

d. INSCOM has reallocated internal resources to establish and staff the Command Services Office (CSO). This organization will be operational on March 1, 2012 and will be responsible for vetting contracting requirements across the Command. It will promote strategic

sourcing, address feasibility/soundness of acquisition strategies, ensure the development of complete acquisition packages, ensure proper funding of requirements, bolster INSCOM's internal Contracts Acquisition Review Board (CARB) policies and procedures and identify roles and responsibilities of those involved in the requirements process.

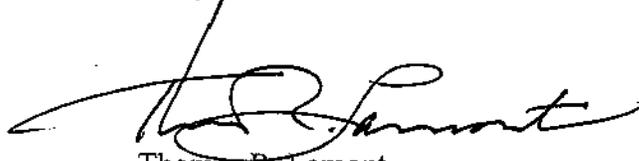
e. INSCOM will implement a process for more comprehensive review for all Service actions over \$100,000 and will develop procedures that will require legal input for Service actions over \$100,000. Moreover, the Commanding General's Principal Assistant Responsible for Contracting (PARC) has incorporated additional management reviews, quarterly stand downs and monthly file reviews to oversee these low dollar actions. INSCOM has also modified its internal training policy to better define the training requirements and opportunities for acquisition personnel in both requiring activities and contracting activity.

f. The INSCOM PARC and the Director of Contracting have established monthly contract update reviews. These reviews will be briefed to senior staff and they will provide status of selected pre-award and post-award contracting activities to include option renewals.

g. The Commanding General evaluated whether adverse administrative action is appropriate for the individuals identified in the investigation and has decided it is prudent to wait until completion of the preliminary investigation on the Anti-Deficiency Act matters.

If you have any further questions, please direct them to Ms. Cassandra Tsintolas Johnson, 703-614-3500.

Sincerely,



Thomas R. Lamont
Assistant Secretary of the Army
(Manpower and Reserve Affairs)