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5 December 2012

U.S. OFFICE OF SPECIAL COUNSEL

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Re: OSC File No. DI-11-2122

Dear Ms. Bradley,

In reviewing the most recent contributions to OSC's follow-up questions to the Department of the Army and subsequently to HQ INSCOM, I am not surprised, once again, to see that amidst the "poli-speak" everyone seems to have accomplished nothing but sidestep any worthy answers. The original Silverback 7 contract was based upon an overall command need for a well calculated support requirement of 49 contractor personnel; it was not some arbitrary requirement that simply established a baseline for comparison between bidding contractors. It was an accurate and calculated assessment incorporating all the desires of the commands for support, regardless of whether they already had a contract in place or not; the only truthful aspect of the whole contract.

Without question, circumventing the Contracting Acquisition Review Board was a planned and intentional action and the resulting contract was deliberately accomplished; a pathetically executed Indefinite Delivery/Indefinite Quantity contract. Unquestionably a Firm Fixed Price contract that called specifically for the services of 49 Contractor personnel, there was no schedule identifying contracts already in place and when to plan for those requirements submitted. Although specific information was absolutely well known and immediately available to Mr. George M. Mancini, INSCOM Deputy G8, he concealed that information to shield him from being exposed to questions he very well knew would create problems. Instead, he elected to not share this information with the document creator, Certifying Official, and, in part, the Contracting Office. Having learned the facts after-the-fact, these personnel brought forward those immediate issues and concerns, and that is when he stated that "he and the chief had discussed this and they were willing to assume the risk". Mr. Mancini was advised of several concerns with regard to the letting of this contract by at least 3 people and elected to disregard any established procedures as well as the advice that he thanklessly dismissed. Unquestionably there were people in the contracting process that were "ramrodded" into taking action they did not agree to have been proper procedurally or consider appropriate to their responsibilities assumed at the issuance of a warrant, who were issued ultimatums to do as they were told, or else . Being disingenuous and without the integrity you would expect of a senior leader, Mr. Mancini, is only angry that someone would challenge his authority. Were it not for his inappropriate disregard to laws, regulations, and ethics, none of us would be involved in such a disgraceful situation. I am aware of several contracting folks having been issued Letters of Reprimand for their involvement in this contract and believe if open and honest discussions were conducted during the construction of the contract, the contracting officer would have more accurately known

how to technically proceed, and undoubtedly would have required a schedule of contracts expiring or options not exercised, and their locations. The appropriate use of task orders to authorize and account for the number of contractor personnel services would have been controllable, and the Contractor would have never been in a position to bill for more than the services called for and rendered. I am quite sure the end result would not have been anything like that which we have experienced of the last three fiscal years. It was Mr. Mancini's failure to act responsibly, act like the fiduciary he is entrusted to be, and lack of integrity that created this mess and for no other reason than to prove he was an unconstrained powerhouse leader that could do and get what he wanted, and rid the command of a substantial amount of money for a pet project; a project that barely, if at all, beat the Congressional 80/20 rule that states that no more than 20% of the commands annual resources can be left unobligated going into the 1st day of August. His original idea may have been done presumably with a good intension of saving the command money, but for all the good that may have come from that call, he has disgraced the command and Army by violating a number of procedural requisites and all of the four elements of the Anti-Deficiency Act (Time, Purpose, Amount, and Bona Fide Need), as well as knowingly abusing his position, and wasting resources.

There is great controversy concerning personnel assigned to the contracting office's comprehension and general application that everything they do must be Firm Fixed Price (FFP) (recommended) and, apparently, by that nature renders common sense superfluous. In this case the contract was appropriately developed as FFP, but the way the government proclaimed things and the Contractor played along, blurred things tremendously. Members of the contracting office often advised me that since the contract was in fact based upon FFP, that whether the contractor provided all 49 personnel to support service requirements or none, they were still entitled to the whole of proceeds of the contract. That whole approach did nothing but demonstrate a lack of education and leadership in the world of acquisitions those particular personnel seemed to misguidedly operate under; it also opened the door for the Contractor to repeatedly bill for services never rendered and initially unquestioned.

Mr. Mancini did not advise the Contracting Officer of positions already encumbered across the command, others did however, and yet it changed absolutely nothing; position title and rank seemed to always trump responsibility. No one ever really cared how many services requirements came up or when, just that the expiring funds were obligated. As noted in the complaint, in the first year, only 15-19 personnel were actually brought on board via the Silverback 7 contract. In the 1st option year, exercised at the time of the investigation, one would have thought that the contracting officer would have found a way to restructure the contract in accordance with the multiplicity of known findings of the IO, or consider terminating the contract for the convenience of the Government because of their vast incompetency or more importantly as a result of the Contractor's improper billing practices where the Contractor would have certainly been in a far lesser position to negotiate termination charges or further claims. But, absolutely nothing has changed in terms of how the contract is applied; although the number of personnel on the Silverback 7 contract did rise to just over 40 people, the command still paid for the services of 49. I simply cannot comprehend how referencing people (not identities), and the ones who ultimately provide the services, required such an explanation of differentiation between people and services. Nor do I understand how any form of contractual vehicle can be let that comes with the assumption that, even where no services were rendered, entitlements to the whole proceeds of the contract are still conveyed to the Contractor. We should have and should be paying only for actual services rendered regardless of whether the contract was let FFP or not, but even to this date, although a decision has finally been made to re-compete this contract, we have not changed our approach on how we have handled this contract one iota. Does anyone else see a propensity to treat other contracts as this one equally as poorly and equally as costly to the government, as is, and continues to be my concern defense-wide?

Since I made my last response, we have now developed a propensity to demonstrate favoritism toward these contracted personnel, over and above many of the civilian personnel, and even more importantly have re-assigned certain favorites of unquestionable lacking qualifications to positions where not only are they wholly unqualified, but to keep those of us conscientious people from complaining about those transfers, quickly have taken on the unlawful task of training these personnel under the direct tutorage of supervisors providing far more than the

appearance of personnel services by any stretch of the imagination and in contrast to the FAR and DFARS which include U.S. Code references and the potential penalties were one found in violation. The overt strategy was to provide the appearance that the individual(s) transfer came as a result of unquestionable qualifications in the event someone where to investigate. Fully knowing up front these people are unqualified, and without regard to the many qualified people, the lack of in-house promotion, and the hard work many of us have put forth to achieve to the positions we currently hold, as well as those we should be competing for, there is absolutely no excuse for leaders that have convinced themselves that they are above the law. We have given a number of these unqualified people employment sanctuary improperly and on the taxpayers contribution which I am quite sure would not pass muster in a public forum. What is worse, some of these people have the demeanor of wolverines, have previously been found unfit to assume the duties that required just short of "basic" knowledge, and tolerate an individual who, after being advised of the charity of an unscrupulous organization, is seeking to make demands on a position for which they are unqualified, and for an amount that is outrageous considering the scope of their capabilities; further, this individual is receiving under-the-table support from one of her contractor associates, and yet another supervisor, and promises continue to be covertly made to specific contractor personnel to bring them on board as federal employees, presumably without competing. The organization has lost contractors to the failure to produce in relation to those promises. The whole thing is worthy of yet another whistle-blower complaint. Favoritism is a bad leadership trait, but to employ contractors who are unqualified and further openly not only support, but provide "A-Z" training to the unqualified contractors, not only implores the appearance of personal services, but in fact, by definition is just that, unlawful and irresponsible. Having witnessed this all transpire, I requested services of experts in law and contracting, from leaders of equal rank and responsibility to educate the offenders, as well as provided guidance which clearly cites United States Codes. All this type of action does is solicit actions to rebuff the challenge and deny the obvious, thinking that once said it'll all go away. It is virtually never viewed as appreciation for someone trying to keep things within legal perimeters and the decision makers from making costly and impacting mistakes.

Although the responding challenge is both ludicrous and ignorant, and something that can easily be resolved by re-addressing the IO individually, I believe that the IO looked at the overall contractual document, without specifically considering the option years, as thy simply were a "carry-over" of the base contract that she undoubtedly, as a result of her findings, thought would cause an immediate restructure of the original Silverback 7 contract in whole. Again, at the time the investigation was concluding INSCOM had already transitioned into the first option year. If the whole contract was deemed to be improperly established, and where, as a result of status, standard procedures were circumvented knowledgeably by direction of, and specifically for the convenience of the initiating action officer, I am sure that she would never have conceived that INSCOM would press on with things absolutely the same as they were from the onset to the point of exercising Option year 2. Somewhere along the line, a determination was finally made that in this year (2013) the contract would be subjected to a re-compete and thus, put a halt, as least temporarily to a continuance to all but ignore all of the findings of the investigator. This all barring that in the re-compete process, the source selection personnel aren't already selected and tainted toward holding the line.

Option years pricing are established at the time of solicitation. To suggest that the government cost estimate was substantially higher ($2.0M) and that any lesser amount offered by the Contractor for services is akin to some sort of saving, especially when one in the know is wholly aware of the minimal efforts that go into government estimates, is nothing more than an example of "smoke and mirrors" mentality exhibited throughout this process by those being investigated. And, I would challenge anybody in the contracting world that price is considered prior to exercising an option year. It isn't price at all, its affordability. If the money is available, the price is insignificant as it is already on contract, however, if funding is not available, an aspect of negotiations is indicated, that's all. True, if for some reason the services are no longer required, which only affordability would obviously dictate in INSCOM, the requiring activity could elect not to exercise the option. The other fruitless babble is utter nonsense, nothing else.

The way things are summed up in INSCOM's Contracting Office, in a case such as this where the government clearly failed to establish a proper contract, mistakes which were heavily dependent on information intentionally

withheld, abuse of power, and failure to follow the law or command policy by others, whether services were or were not rendered, gives the Contractor entitlement to the whole of the proceeds of the contract. But this cannot be the case as the Contractor must render services to be entitled to any of the proceeds. On the other hand, the Contractor is clearly and knowingly billing fraudulently for services not rendered. Both should come with disciplinary consequences. In relation to the proposed agreement, the sum differences computed (delta between $1.1M and $1.8M, for example) exceeding $700K appears to be viewed as relatively equal. But, to the taxpayer I am very sure that such a comparative would not be viewed the same. I have absolutely no understanding of why the contracting office chooses to protect the contractor more so than the taxpayer as it's the only reason they exist in the first place.

As far as the Contracting Office having no issues of non-performance in CPARs, this is easily explainable. Until this complaint arose, the use of CPARS was sparse to not-at-all at best. Also, the COR for the organization at that time, was far from being proactively involved in her oversight responsibilities even though, I know for a fact, in discussion with her, prior to the investigation that she had issues with the contract and advised Mr. Mancini (Deputy G8). However, once she found that her challenges were "kicked to the curb" she backed off and soon after took another job outside of INSCOM having never input anything into the CPARs system. The current COR is trying to proactively gain control over the contract, but is constantly constrained/intimidated by Mr. Mancini's involvement. She was initially given the position as an opportunity to fail, but the joke has been on management, as she has tried, amidst a formidable opposing force, to do what is right. It is only recently that mandatory employment of the CPARS process has evolved in this command, so to suggest, knowing the failures of the system, that nothing was available, is right on the one hand, but far from being ultimately forthright since the same personnel making that claim were ultimately responsible for ensuring the CORs made their inputs, good or bad.

It most certainly does not take a PhD in contracting to recognize the obvious differences between evaluation of and exercise of options and frankly, there is nothing to be gained by defining either of these aspects as pertinent to the discussion. The evaluation, in better than 98% of all option years, over the scope of all contracts, passes scrutiny from the Contracting Office, as pretty much only a simple review of the applied inflation rate.

The whole fiasco began in much the same circumstances as it currently operates. If a contract employee tenders a resignation or is found to be lacking in the needed qualifications, an immediate action to have someone, anyone having what appears to be any deviant form of qualifications, capabilities, or performance is basically all the Contractor contract manager requires. Many times what happens here, where an individual is deemed incapable of performing to expectations and the corporate contract manager is asked to remove and replace them, is that the otherwise unproductive employee is relocated to reestablish time and to resurrect their former performance somewhere else, or as is the politics in government services, a highly qualified person in an otherwise unchallenging position, is most often overlooked and the position is filled with a body that we are led to believe up front has the qualifications. I have personally never witnessed and spoken with many contractor personnel that are disgusted with their company and are seeking to leave upon finding more fruitful employ. The whole contract, from all perspectives, has been far less than what I believe the law expects of both the government and the contractors. Frankly, we have never received the benefit of 49 personnel, regardless of how the contracting folks want to speak in terms of services versus personnel, and we have always paid the full proceeds of approximately $8.4M with each passing year. The contracting folks support the theft of taxpayer monies by looking the other way when the Contractor bills for services not rendered, and the personnel they do provide to fulfill our services needs are often unqualified, unprofessional, and disgruntled. Not exactly a benchmark support contract is it? And from the standpoint of being a Certifying Officer, without being opportune to the truths would not recognize any issues with regard Time, Purpose, Amount, or Bona Fide Need, and verifying that funding is available, they would sign the document and push it forward.

The stated response that once in the Option Year the Contractor appeared to be performing "most" of the functions called for in the Performance Work Statement is in itself proof that , in essence, they really were not. Most of the functions are certainly not "all" of the functions and they were indeed paid to perform all of them. The reason there

is such difficulty in determining whether anybody was actually doing much of anything to support the contract is again brought to light by the shear amount of transience between the positions, the majority of which comes as a result of failing qualifications. This was further exacerbated by a young manager of the contract that had no idea what she was doing, but did well for the few she liked and after creating a "God Forsaken" mess, has returned to the corporate headquarters to develop the new company proposal on behalf of Silverback 7 for the re-compete action. I have personally never witnessed such mismanagement, considering all involved, as with the contract from legal, morale, and ethical perspectives. It is because of this contract, and those involved, that I would wholly recommend a DoD wide review of all such contracts and also stress the need for a far simpler, though in-depth need for a DoD regulation that simplifies the FAR and DFARs, which are primary tools of the Contracting world and are seldom read or otherwise consulted by others outside of that arena, that would detail permissive activities and those that cross the line, as well as how applicable laws for failure to comply can have consequences to all involved, and specifically what those consequences entail.

No one ever cared about individual people in this complaint and always cared about performance-based results; another wasted effort to cloud the issues by imploring ignorance. The issue has always been that a Contractor should never be allowed to bill for services not rendered, regardless of the contract type, as they did and the Government condoned originally until this investigation came to light. There is no difference between people and services, names and personalities aside; both are synonymous! The fact remains that 49 people were calculated as being needed across the command through the actions of Mr. Mancini who fully intended to bring those 49 on board without regard to contracts already in place. The fact remains that once he was discovered to have circumvented legal, moral, and ethical issues to achieve exactly what he wanted to accomplish simply as a result of his status in the organization, he had lost the advantage of claiming a simple error in pursuing things as he did, and rather than do the right thing, elected to continue to push his knowledge based informers back and press on hoping that nothing would come of it....but to his surprise, it did. He, like so many in INSCOM, and I am quite sure elsewhere, believe that he is king and no one would dare challenge his rule, but again he was very wrong. There is absolutely no doubt whatsoever that he knew from the onset that he wanted what he conceived to be a huge savings to the command, and did not care what obstacles lie in his path; he would just wave his scepter and all laws, boards, or other obstacles would simply disappear. After all, he and all of his cronies of the upper echelons have acted in such a fashion, protecting one another, for years. But then came aboard a true fiduciary who realized right from wrong, was dedicated to assisting the government to attain its absolute needs to meet the mission, but always keeping in mind the value to the taxpayer as well, and one who is committed to seeing senior managers be the example, not abuse their positions, and put themselves, those who follow, the command, and the mission at risk. Now, instead of heeding to professional advice from those in the know, he has brought disgrace upon himself, the command, and the Army as a whole. This is intolerable and should have long since contributed to his being relieved, and he likely would have been were it not for the others in the hierarchy of senior leadership being supportive to one of their own who got caught; exactly what the others expect should happen in the event something they do without regard to law, morality, or ethics is discovered.

I recommend the Army, on behalf of American taxpayers, not just accept the offer of Silverback 7 to pay back $1.1M for bills paid and services not rendered. Where an amount is so quickly offered, one doesn't need much in terms of intellect to realize that the impact upon the company is minimal, and affordable. In the Base Year alone, the amount of reimbursement to the government, using an across-the-board approximate corporate body rate of $171.5K, should be in the realm of $5.2M. And since the contractor has never been called upon to provide the services of 49 personnel in either the first or second option year, I am quite sure that the $1.1M in terms of those periods is more apropos. In the end, approximately $6.3M in comparison to the offered $1.1M is a rather wide disparity and to go with the latter offer would be both irresponsible and represent to the American taxpayer that our true intent is to favor unscrupulous business practices and accept errors as part of doing business without regard to the constantly perpetuating levy's placed upon the people and the reserves that are commonly understood to be the "people's monies". As well, I believe the same people would have greater faith in both their government and the

DoD were those who were complacent and otherwise downright dismissing of public law, morals, and ethics appropriately disciplined in a public court of law for all to take notice, and from the perspective of those still in the ranks who believe that such actions will go unpunished, a precedence that those days, although never really acceptable, are indeed over, and for good. Frankly, the efforts of employing simple mathematics and deriving some sort of calculus on behalf of the Government to justify a nominal reimbursement by the Contractor, demonstrates the lack of desire to perform to the expected standards of their charter to such a point that one wonders whether their usefulness has been outlived. Anyone can buy a sheet of plywood, for example, at a price of $25 per board. But the responsibility of the Contracting Office is to negotiate a better deal. So when they come back after looking at the going rates between local providers and never once seek to negotiate, with a board price of $25, they have failed to adhere to their charter and render themselves needless. One final point on this aspect concerns the number of people that the Government computes the Contractor to have provided. Since several people have been provided, and a good number of those personnel have either resigned or were relieved of employ in one area and were moved to facilitate a loss elsewhere, or were simply replaced altogether, the number of people would certainly appear elevated, but that would not directly correlate to the services provided; for example, 20 people may have only accomplished equivalent services of 10 Contractor Manpower Employees, keeping in mind, the services provided, not the body count, as per the details provided by the same people clarifying this point earlier are those computing these numbers, is how the company should be credited with payment; a perspective that challenges the computation methodology utilized by the officials answering previous inquiries.

Lastly, for those already proven malfeasant, to allow them to remain in their current positions is an absolute travesty. These personnel are supposed to be role models and examples to their subordinates and for their people to mime actions. Yet unless the word of disciplinary action taken is decried, this action, or failure to take action does little more than supplement the courage of others to emulate them without considering any form of future actions against them, believing that nothing beyond the written U.S. Codes, potential fees and imprisonment threats, are material concerns. This allowance does nothing to impress change upon the mindsets of current employees and perpetuates the constant facilitation of cronyism which, it itself, should be outlawed.

The ADA package was initially prepared as was anticipated, finding nothing much on which to hang upon anyone and offering that possible mistakes were made based upon interpretation. This flew for a while, but with OSC persistence, it finally was impressed upon the senior staff that this issue was both important and not going to go away. The requirement to redo the package was directed down. Mr. Mancini did make literal statements that advised others in the process to ensure that I, by name, not be provided an opportunity to review or make any inputs to the process. Although, I do believe that the second attempt, still being overseen by Mr. Mancini who is the one on which all of the charges were levied, was conducted more appropriately, although not as thorough as the true facts would support. I do feel that although still a cover up document concealing what would amount to the whole truth, the second effort does contain information that is certainly not flattering to the Army or the command and as such, is being held up by the Army to buy time to establish some sort of alibi on which to claim misunderstanding or misinterpretation of the four major concerns of an ADA, known acutely by most, if not all financial management practitioners, as being Time, Purpose, Amount, and Bona Fide Need; all violations that should be or should have been, dependent upon what is actually released in the report, levied upon Mr. Mancini. Being the Command Deputy Resource Manager he should have reasonably understood and been wholly aware of the requisites, as well as, by nature of his position, he is required to complete, at least on an every 3 years basis, an accredited fiscal law course that would have comprehensively made his aware of his responsibilities, in this case, specifically in respect to the ADA points stated above in this paragraph. He clearly should have known what he was doing or sought someone who did; a problem with bringing in personnel from the military, after retiring, directly into senior civilian service levels who lack the appropriate credentials, have never worked with civilians, as a general rule, and dislodge those from the Civilian Service ranks that clearly meet all of the requisites of technical expertise and proven effective leadership without having the dependency upon rank on which to command action, or favors owed by fellow insiders, something that does not work well in the civilian sector.

All in all, I believe, based on the responses, that both INSCOM and the Army did their best to provide responses that, although offer nothing in terms of fruitful information, but rather serve only to fill in a paragraph or two to pacify or down-scope the questions by loading them up with ignorant, less than forthright responses, did meet a deadline and their intention in terms of answering your questions.