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To: The Office of Special Counsel (OSC)  
Attn: Siobhan S. Bradley  
Attorney, Disclosure Unit

REF: HHS response to OSC file DI-12-3737 to the National Institutes of Health's (NIH) handling of a contract with **George S. Hall, Inc (GSH)** No. HHSN292200800002L for services at the facility known as the Bayview Campus Facility that is held under the NIH Lease No HHSN29200700105L (**formally Lease No. LRP-060197**) "**BRC Lease Company, LLC, A Maryland Limited Liability Company**" **executed on June 15, 2001 for twenty years (20 yrs).**

**New issues due to the HHS response:**

- George S. Hall, Inc (GSH) No. HHSN292200800002L is a goods and services contract with no end date established.
- GSH contract is not being used just to cure deficiencies for the safe occupancy of employees and animals but for all activity in the building including, parking, new requirements and handyman services.
- Change orders/modifications are being done for new requirements.
- GSH gets 12% mark-up on services not performed by them directly. This payment would not be a necessary at all if properly bid-out for services.
- This contract is using appropriation funds and Agency funds currently exceeding \$60,000,000.00 (\$60M) within the past 4.5 years. (mid 2008-2013)

Dear Ms. Bradley,

Department of Health and Human Services is stating that my report of improper activity is unfounded based on the "Department of Health and Human Services Appropriations Act, 2001"

**A) To Address the response regarding "Department of Health and Human Services Appropriations Act, 2001"**

- 1) Within the entire "Department of Health and Human Services Appropriations Act, 2001" the only part that pertains to this facility is Sec. 221 only.
- 2) This entire Appropriation of section of 221 is as follows:  
Sec. 221. Notwithstanding any other provision of law, the Director, National Institutes of Health, may enter into and administer a long-term lease for facilities for the purpose of providing laboratory, office and other space for biomedical and behavioral research at the Bayview Campus in Baltimore, Maryland: *Provided*, That the House and Senate Appropriations Committees will be notified of the terms and conditions of the lease upon its execution.
- 3) The Lease that NIH entered into was with BRC Lease Company LLC (BRC), formally FSK Land Corporation under Lease No. LRP-060197 later changed to Lease No. HHSN29200700105L AKA (**105L**). As of February 1, 2013 this is still a current and active lease for 20 years.
- 4) This above appropriation clearly states "National Institutes of Health, may enter into and administer a long-term lease".... "That the House and Senate Appropriations Committees will be notified of the terms and conditions of the lease upon its execution."
- 5) Therefore, once the National Institutes of Health (NIH) entered into a fully executed long term lease for the "Bayview Campus in Baltimore" that appropriation was fulfilled in its entirety, assuming that they did notify the House and Senate Appropriations Committees.
- 6) To "administer" a lease means "lease administration".
- 7) Properly warranted Leasing Officials, also known as "Realty Specialists" are required to take a "Lease Administration" class in order to obtain a Leasing Contracting Officer's warrant.
- 8) Lease administration includes, modifying the lease with the Lessor/Owner (Proper official with signatory authority who holds a leasehold interest in that specific lease who can authorize, change, modify and provide services to the government under that lease).

- 9) To "administer" a lease allows for any necessary changes to modify terms in the Lease. AKA: A Supplemental Lease Agreement (SLA)  
examples: modify Overtime HVAC requirements, change cleaning hours, install emergency generators, adjust business hours, rental rate modifications, expansion or reduction of space, alterations/renovations, painting, installing security measures.
- 10) 99% of modifying terms in the lease require all parties (Lessor and Government) to sign/execute the agreement to change the lease. Also known as a Bilateral signature requirement.
- 11) Services to the tenant/Agency at that facility by another contractor are NOT administering the lease since it was not done by the Lessor.
- 12) Services to the tenant/Agency, acquired by the tenant, on its own, to aid the tenant in this or any "Facility" is a separate contract. A separate contract with a different entity is not the Lease.
- 13) The GSH Contract in question is a separate service contract under contract No. HHSN292200800002L **AKA (02L)**
- 14) There is nothing in Sec. 221 appropriations that provides for provisions should the Lessor default years later.
- 15) There is nothing in Sec. 221 that gives a separate appropriation for a service contract in addition to the "long-term lease" that was executed for 20 years with the BRC Lease Company LLC (BRC).
- 16) Therefore, should the lessor default, years later, the Agency would be required to follow the laws, policies, rules and regulations for curing an existing fully executed lease due to Lessor default.
- 17) The term "Notwithstanding any other provision of Law" in this case would pertain to the standard laws in which DHHS would normally acquire delegation to "enter into and administer a long term lease".
- 18) It would not however, pertain to contracting outside of the existing lease.
- 19) It would not pertain to any and all the separate contracts obtained by the agency just to provide services to the facility for the next 20 years, regardless if it is to fix deficiencies in the facility.
- 20) A Government Lease is defined as: "Lease" or "leasehold interest in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.  
See: <http://www.acquisition.gov/gsam/current/html/Part570.html> 570.102 Definitions.
- 21) The keyword is "Landlord"
- 22) The Landlord for the "Lease" is BRC Lease Company LLC (BRC), formally FSK Land Corporation.
- 23) The Appropriation is for a Lease ONLY.
- 24) George S. Hall, Inc (GSH) is not the Landlord. GSH is not working on behalf of the Landlord. GSH was fired by the Landlord in 2008.
- 25) Since GSH is not the Landlord of the Bayview Campus Facility and they do not have the power or authority of conveyance to grant to the Government, the GSH contract (02L) is not a lease.
- 26) Since the GSH contract is not a lease this is not a part of the appropriation Sec. 221 of the "Department of Health and Human Services Appropriations Act, 2001"
- 27) On May 10, 2007, BRC and NIH entered into a bilateral Supplemental Lease Agreement 24 to Lease No. HHSN29200700105L (105L) procuring GSH services, HOWEVER, in 2008 BRC defaulted and fired GSH.
- 28) On July 17, 2008 NIH entered directly into a contract with GSH (02L). This contract excluded BRC and was done with a new base service contract No. HHSN29220080000**2L**
- 29) In 2008, NIH made a decision to hire GSH directly to cure the landlord default of deficiencies (after the Lessor fired GSH in 2008, thereby defaulting on the Lease contract 105L).
- 30) On August 11, 2008 NIH issued a default notice to BRC informing them that due to the Lessor's inability to comply with the lease (this includes SLA 24) NIH entered into separate service contracts and will offset the amount from the rent (take the cost to the government from the Lessor's rent).
- 31) NIH has violated CICA, FAR, GSAM and GSAR. When the BRC Lessor failed to perform as the Lessor, in 2008, thereby, requiring NIH to obtain good and services on its own. The NIH government chose to enter into a separate contract, and in doing so failed to comply with the Laws, Rules and Regulations for entering into a Goods and Services Contract.
- 32) "Justification for Other Than Full and Open Competition " and failed to comply with GSAM 570.503 **570.503 Alterations by the Government or through a separate contract.**  
If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:
  - (a) Have Federal employees perform the work.
  - (b) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property.

**Summary :** When NIH entered into a separate goods and services contract with GSH under contract no. 02L (this contract stands alone and is not a supplement to the Lease contract no. 105L) it requires NIH to contract out the work using **“standard contracting procedures that apply to a construction contract performed on Federal property.”**

**The GSH service contract 02L in question, is not the executed long term lease, the BRC lease 105L, of the aforementioned appropriations nor is it a Supplemental lease agreement of the BRC Lease 105L.**

Furthermore, with regards to abiding the GSAM laws after execution of the **BRC Lease No. 105L** with BRC Lease Company LLC (BRC), formally FSK Land Corporation:

GAO Decision B-271412, June 13, 1996; GAO Decision B-208705, Sept. 14, 1982., GAO Red Book Volume I, page 100) ...the words “notwithstanding any other provision of law” **are not words of futurity** and, standing alone, offer no indication as to the duration of the provision.

“THE TERM “HEREAFTER,” THE PROVISION WILL USUALLY BE CONSTRUED AS PERMANENT”

There are no words of futurity such as hereafter regarding this appropriation.

Also see: See District of Columbia Federation of Civic Ass’ns v. Volpe, 459 F.2d 1231, 1265 (D.C. Cir. 1971), cert. denied, 405 U.S. 1030 (1972) (provision of Federal-Aid Highway Act directing construction of a bridge “notwithstanding any other provision of law” did not render inapplicable certain federal statutes regarding protection of historic sites); B-290125.2, B-290125.3, Dec. 18, 2002 (finding that statutory directions governing certain aspects of an agency procurement **“notwithstanding any other provision of law” do not override GAO’s bid protest jurisdiction under the Competition in Contracting Act**). (GAO Red Book Volume I, page 223.

NIH, as all government entities, has the right to cure deficiencies that a Lessor is not performing. But they only have the right to cure the deficiency **ONLY!** And must still follow the Competition in Contracting Act (CICA) to do so. NIH has issued all work to GSH including new needs that arise and that have arose since 2008 – 2013 without requiring GSH to compete for their services.

**B) To address the response of 1170 vs. 1102 series:**

- 1) It is not in question whether an 1170 can also be an 1102. The Series are in fact similar and one can be interchanged and simultaneously done by a federal employee with the experience and with the proper training.
  - 2) With the **“proper training”** being the key words.
  - 3) This issue in question is regarding the issuance of an unlimited warrant and the training required to be able to receive or to issue such a warrant.
  - 4) To obtain an 1170 unlimited warrant you must have taken the proper training.
  - 5) To obtain an 1102 unlimited warrant you must have taken the proper training.
  - 6) Although the work is similar and the experience requirement is similar, the training course requirements are completely different.
  - 7) In order to receive an unlimited warrant for goods and services, ie: 1102 warranted officer, you must have a FAC-C level III certification. (LEVEL 3)
  - 8) In order to receive a FAC-C level III certification you must have completed and received a FAC-C level I and FAC-C level II certifications, a Bachelor’s degree and at least 24 accredited college semesters with the following disciplines: accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.
- See <http://www.fai.gov/drupal/node/89> and <https://www.acquisition.gov/gsam/current/html/Part501.html>

**ie: Code of Federal Regulations (CFR) CFR TITLE 48 FAR part 5 501.603-3**

FAC-C level I courses	FAC-C level II courses:	FAC-C level III courses
	All of FAC-C level I and	All of FAC-C level I and II and
CON 100	CON 214	CON 353 or CON 360
CON 110/FCN110	CON 215	2 electives and
CON 111/FCN111	CON 216	a Bachelor’s degree and at least 24
CON 112/FCN112	CON 217	accredited college semesters with the
CON 120	CON 218	following disciplines: accounting, law,
An elective	2 electives	business, finance, contracts, purchasing,

		economics, industrial management, marketing, quantitative methods, and organization and management.
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- 9) Neither Donna Ouellet nor Pat Rice have completed the FAC-C level I as of February 2013.
- 10) In fact in 2012 Pat Rice and Donna Ouellet began taking CON 100 as a requirement enacted by the newly hired Office of Acquisitions Director, Sharon Bruce, (hired Sept 2011) who made a performance requirement that her entire staff in the office of Acquisitions who did not yet receive FAC-C certifications to begin obtaining them. This includes myself along with the entire Real Estate Contracting Branch (RECB)
- 11) The DHHS/NIH HCA issued the same wording for all the warrants to all the staff in RECB including myself.
- 12) All Contracting Officers has the exact same wording as that on Pat Rice and Donna Ouellet's latest warrants. Our warrants were not issued as a "special warrant" to handle the GSH service contract. This was merely the standard warrant that all 1170 contracting officers received, none of which had any level of FAC-C certifications.
- 13) RECB Contract staff consisted of 7 Contracting Officers; Pat Rice, Paula Posey, Samuel Odilatu, Edwin Anderson, Monica Hughes, Donna Ouellet and Carl Christine. All the RECB Contracting officer's warrants states the following:  
 "in value for the acquisition of real property, leasehold interests and lease alterations. Exercise of this appointment is limited to the real estate leasing and acquisition actions for which you hold a written delegation of authority and shall be executed in accordance with all requirements of Federal law, Executive Order, the Federal Property Management Regulations, and the General Services Administration Acquisition Regulation and applicable NIH policy and procedure"
- 14) There is NO difference in the wording of anyone's warrant, just the dollar amount of the acquisition threshold.
- 15) If the Head of Contracting Activity (HCA) had issued special warrants (non-standard warrants) for the whole team then she exceeded her authority which would make this a much bigger than I ever anticipated, as all NIH Real Estate contracts would require ratification.
- 16) There is no such federal position as "Contracting Officer" as it is a warrant acquired by training, not a federal position; therefore OPM would not be the source of expert information.
- 17) Contracting Officer Warrants are not transferable between agencies as each HCA of that agency must issue the warrant to an eligible federal employee of theirs.
- 18) "Eligible" being the key word.
- 19) Without the proper training the employee is not eligible for the warrant.
- 20) More importantly, there are and were several warranted officers within NIH's Office of Acquisitions who did have the proper FAC-C Level III training.

★ **NOTE:** As of October 2012, Pat Rice and Donna Ouellet are prohibited by their upper management from signing the GSH contract (02L), they are however, still allowed to sign the BRC lease contract (105L).

- \* The GSH Contract is now being signed by the Office of Acquisitions Director Sharon Bruce who holds a FAC-C Level III Contracting Officer's warrant and, as a stop gap measure, was also issued a temporary Leasing warrant.
- \* Sharon Bruce must still take the leasing training to be a properly warranted leasing official.
- \* Sharon Bruce does not sign the BRC lease (105L). She does not sign any Leases.

**Summary:** Pat Rice and Donna Ouellet did not have the training for a goods and services contract ie: 1102 Contracting Officers warrant training as required under the *Contracting officer warrant program (COWP)* that all federal employees must follow. They just started taking the FAC-C Level I training in 2012. Pat Rice definitely does not have the required 24 semester hours. I'm unaware of Donna Ouellet's degree curriculum.

There is no Office of Personnel Management "OPM experts" with regards to a Contracting Officer (CO) Warrant because there is no such thing as a Federal Position for "Contracting Officer". A CO warrant is non-transferable. Only the training is transferable. The training is a Government wide requirement. Each HCA must issue a warrant based on the level of training obtained by the employee.

To give an 1102 Contracting Officer's warrant to an untrained 1170 employee just because the agency has a need to fill, is the equivalent of a issuing a Commercial Driver's license (CDL) to a person with no CDL training who is holding a passenger's vehicle license and then allowing them to drive a MAC Truck for a Shipping Company because the company was short a driver.

NIH did have properly trained warranted officers. Mr. Rice could have deferred to them but instead he entered into several direct service contracts, this GSH contract (02L) is just the last active illegal contract that is not closed/terminated.

- C) **Regarding expert opinions:** I, Monica Hughes have been handling government contracts regarding the acquisition of real property, leasehold interests and lease alterations since 1999. My 14 years of experience includes working on behalf of the following government entities via the General Services Administration: FCC, NTSB, HUD, DOT, DOJ,DOED, USDA, USCG, SBA, MARSHALS, FAA, NACO, ITC, TSA, FEMA, ICH, CSOSA, Tax Court and IBBG. I've also worked at the United States Coast Guard, procuring real estate for communication towers to secure our coast just prior to joining NIH.

Majority of that experience was as a contractor for the United States Government with the title of "Executive Real Estate Specialist". The National Institutes of Health (NIH) acquired me from the company ISI professional Services as a specific request for a very experienced Realty Specialist who required no training. I became a full-time Federal employee for NIH in June of 2008.

I assure you I am an expert with regards to which I speak and would not have addressed these issues with no merit. I am also aware that NIH is attempting to cover up their mistakes and I'm am personally aware that NIH has no department or person in who has much experience with handling leases other than myself.

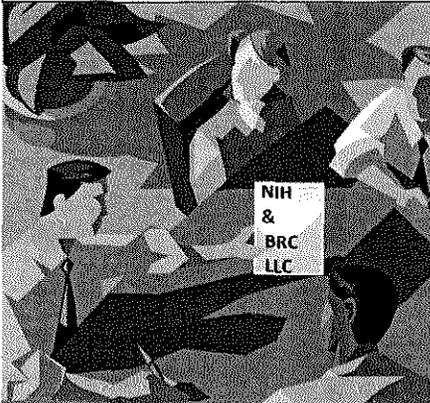
Sincerely,  
Monica Hughes

The BRC Facility at Johns Hopkins University  
251 Bayview Blvd, Baltimore, MD 21224

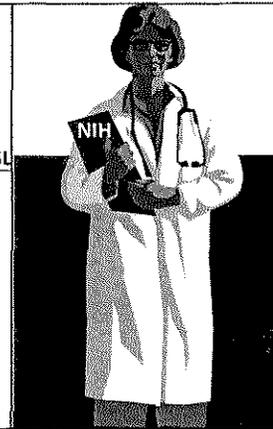


LESSOR/ OWNER  
LANDLORD

LESSOR/Owners/Landlord of the  
BRC Facility:  
BRC Lease Company LLC, formerly  
of FSK Ownership



TENANTS: HHS's National Institutes of Health



Lease: HHSN292200700105L

Contract: HHSN292200800002L

Contractors:  
George C. Hall Inc. AKA: GSH



NIH and BRC LLC entered into a 20 yr. Real Property Leasehold Lease No. HHSN292200700105L (formerly LRP-060197), under the "Department of Health and Human Services Appropriations Act, 2001"-Sec.221

In 2008, the BRC LLC Lessor failed to pay its Contractors "GSH" and the work was halted in the facility.

In 2008 NIH entered into a separate contract with "GSH" to procure Construction services and other goods and services that are **NOT related to deficiencies**. The Government Official (Pat Rice) who entered the contract did so without having the training required for a **Goods and Services warrant** and without following the proper FAR and CICA act procedures for the "Justification for Other than Full and Open" contract, thereby violating the "Anti Deficiency Act"

The ongoing NIH and GSH Goods & Services Contract No. HHSN292200800002L is over \$60,000,000.00 (\$60 million). With approximately \$47 million being tracked in the NIH Business System (NBS).

Since GSH is NOT the Lessor and they do not hold any leasehold interest in the property, this contract is not a Lease and therefore is NOT a part of the "Department of Health and Human Services Appropriations Act, 2001"-Sec.221