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The Special Counsel

March 26, 2009

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

Re: OSC File No. DI-08-1101

Dear Mr. President:

I received disclosures from Mr. Patrick Waller, a former employee at the Department of Commerce (DOC), Office of Administrative Services (OAS) in Washington, D.C. Mr. Waller, who consented to the release of his name, alleged that employees at the DOC OAS were not following procurement procedures properly, including separating the purchases of scanners into two transactions, thereby avoiding regulatory acquisition requirements.

Mr. Waller's disclosures were referred to the Honorable Carlos M. Gutierrez, former Secretary of the DOC, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Gutierrez tasked the Office of Inspector General (OIG) with conducting the investigation. We received a report dated December 18, 2008. Mr. Waller provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1); his comments are attached. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report and Mr. Waller's comments to you.

Mr. Waller alleged that Mr. Fred Fanning, Director of Administrative Services, was responsible for not following procurement procedures, and directed employees to separate the purchase of two Intermac scanners from Annams Systems Corporation, at a total cost of \$162,996.60, into two transactions of \$80,000 and \$82,996.60, respectively. Mr. Waller alleged that the purchase was separated in order to circumvent the \$100,000 limit imposed on single purchases by the Commerce Acquisition Manual (CAM) and to avoid the need for an acquisition waiver from the Chief Financial Officer and Assistant Secretary for Administration of the DOC.

Although the investigation demonstrated that the purchase of the scanners was separated into two transactions at the request of the vendor, Annams Systems Corp., the investigation also revealed that the DOC Agency Program Coordinator (APC) improperly increased the single purchase limit for a non-acquisition position purchase cardholder to an amount over \$100,000, in violation of Part 1313.301 section 2 of the CAM. As a result, the agency has revised Part 1313.301 to limit the purchase dollar cap to \$3,000 and to require that both acquisition and non-acquisition employees are trained as Contracting Officers before they can receive a cap increase. The agency has also pledged to enforce the CAM by using an updated processing system for acquisition waiver requests and by tracking the acquisition training that DOC employees receive.

The President

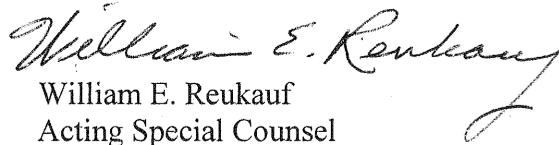
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Mr. Waller had an opportunity to review the agency report, and he identified several issues which he felt the OIG's investigation failed to address fully. First, Mr. Waller questioned why the purchase was not contracted using a competitive process and whether a warranted contracting officer reviewed the transaction. Mr. Waller indicated his belief that if the proper officials had been involved, they would have insisted on a formal waiver request and response. Second, Mr. Waller questioned whether the purchase of the scanners fell outside of the software-only contract that the agency had with the vendor, Annams Systems Corp. Finally, Mr. Waller questioned whether the agency compared the cost of the scanners as purchased against the preferred price usually given by the manufacturer.

I have reviewed the original disclosures, the agency's report, and Mr. Waller's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the agency report and Mr. Waller's comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce and to the Secretary of the Department of Commerce. I have also filed a copy of the report and Mr. Waller's comments in our public file and closed the matter.

Respectfully,


William E. Reukauf
Acting Special Counsel

Enclosures