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JUN 25 2014

Special Counsel Carolyn N. Lerner  
U.S. Office of Special Counsel  
1730 M Street, N.W. Suite 300  
Washington, D.C. 20310-0101

RE: Whistleblower Investigation, Network  
Enterprise Center, Fort Buchanan, Puerto Rico,  
OSC File Number DI-14-0026

Dear Ms. Lerner:

In accordance with Title 5, United States Code, Sections 1213(c) and (d), the enclosed report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me his authority, as agency head, to review, sign, and submit to you the report required by Title 5, United States Code, Sections 1213(c) and (d). [TAB A].

The Department of the Army (DA) has enclosed two versions of its report. The first version of the report contains the names and duty titles of military service members and civilian employees of the DA. This first version is for your official use only, as specified in Title 5, United States Code, Section 1213(e); we understand that, as required by that law, you will provide a copy of this first version of the report to the Whistleblower, the President of the United States and the Senate and House Armed Services Committees for their review. Other releases of the first version of the report may result in violations of the Privacy Act<sup>1</sup> and breaches of personal privacy interests.

The second version of the report has been constructed to eliminate references to privacy-protected information and is suitable for release to all others as well as any regulations that require protection. We request that only the second version of the report be made available on your web-site, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the report.

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<sup>1</sup> The Privacy Act of 1974, Title 5, United States Code, Section 552a.

## INFORMATION INITIATING THE INVESTIGATION

By letter dated February 21, 2014, the Office of Special Counsel (OSC) referred to the SA specific allegations made by an anonymous whistleblower against the Fort Buchanan Network Enterprise Center (NEC), 106th Signal Brigade, 7th Signal Command (Theater), Fort Buchanan, Puerto Rico, which form the basis of this investigation and Report. The OSC advised that those allegations, if accurate, disclosed that NEC officials may have engaged in actions constituting a violation of law, rule, or regulation and an abuse of authority. Specifically, the whistleblower made the following allegations:

OSC Referred Allegation 1: Mr. [NEC Director], the NEC Director, on several occasions, improperly gave gifts (gift cards) and awards (including free lunches) to contract employees who are employed by GC&E Systems Group. These actions were improper in that they involved the expenditure of agency funds on contract employees' awards and created the appearance of an employee/employer relationship between contract employees and agency management.

OSC Referred Allegation 2: Government-sponsored Avaya Voice training was improperly provided to contract employees (Mr. [GC&E Employee #1], Mr. [GC&E Employee #3], and Mr. [GC&E Employee #2]) between September 20, 2013, and October 4, 2013.

OSC Referred Allegation 3: Mr. [NEC Director] improperly promoted Mr. [GC&E Employee #1] and Mr. [GC&E Employee #2] to Network Engineer contract positions without the guidance of the Contracting Officer, Mr. [COR], or the Contract Site Manager, Ms [GC&E Site Lead].

OSC Referred Allegation 4: Mr. [GC&E Employee #1] and Mr. [GC&E Employee #2] were promoted without the required experience, training, and certifications for their positions.

OSC Referred Allegation 5: Contract employees regularly engage in inherently governmental functions, such as attending meetings for federal employees and conducting training for top management.

OSC Referred Allegation 6: Mr. [NEC Director] directed contract employees to work on projects outside the scope of their contract, such as the construction of a gazebo on government property.

OSC Referred Allegation 7: Materials for the gazebo building were purchased on a Government Purchase Card at Home Depot, but were later returned to the store and logged by the responsible Parties as "furniture."

OSC Referred Allegation 8: Contract employees are permitted to use government-owned vehicles to conduct on-base work, while federal employees are required to use their own vehicles for both on and off-base work.

## CONDUCT OF THE INVESTIGATION

Shortly before the OSC's referral of the whistleblower's allegations to the SA, the 7th Signal Command (Theater) Inspector General (IG) also received complaints regarding the Fort Buchanan NEC. By letter dated January 27, 2014, the 7th Signal Command (Theater), Inspector General (IG) referred the allegations it had received concerning the Fort Buchanan NEC to the Commander, 106th Signal Brigade, Joint Base San Antonio, Fort Sam Houston, Texas. [TAB B]. Specifically, the complaints to the IG made the following allegations:

(1) Mr. [NEC Director], NEC Director, created an unhealthy command climate, in violation of AR 600-100, Paragraph 1-6;<sup>2</sup>

(2) Mr. [COR], Contracting Officer representative, received handyman services at his residence from Mr. (GC&E contract employee) as a favor, in violation of the Federal Acquisition Regulation (FAR), Paragraph 3.101-2;

(3) On or about 25 October 2013, Mr. [NEC Director] improperly directed Mr. [Network Specialist #1] (DA Civilian) to discuss classified information over a non-secure line, in violation of AR 380-5, Paragraph 6-13;

(4) On or about 14 August 2013, Mr. [NEC Director] improperly used the Government Purchase Card to make unauthorized purchases (\$2509) for gazebo materials, in violation of the Army Government Purchase Card Standard Operating Procedures, 14 January 2014;

(5) Mr. [NEC Director] improperly discussed negotiated terms of an upcoming GC&E contract to get six additional contract employees for the inside/outside plant with GC&E officials, in violation of FAR paragraph 3.104-3;

(6) GC&E employees were provided government-sponsored Avaya Voice and Switch training, in violation of Government Contract #W91RUS-08-D-0004;

(7) GC&E employees were moved to different positions (Network Engineers, Administrative Assistant, Communications Technician, Network Switches Configuration, IT Specialists, and Configurations Management) within the NEC without the required training and qualifications listed in Government Contract #W91RUS-08-D-0004, in violation of the FAR, paragraph 3.101-2; and

(8) GC&E employees were required to construct a gazebo and build a Christmas float at the NEC during duty hours, in violation of Government Contract #W91RUS-08-D-0004.

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<sup>2</sup> Allegations 1, 2 and 3 that were received by the 7th Signal Command (Theater) IG concerning the Fort Buchanan NEC are not addressed in this Report since they were not referred by the OSC to the SA for investigation. They are merely referenced above as additional background information.

By memorandum dated January 29, 2014, the Commander, 106th Signal Brigade, appointed Mr. [IO] as an investigating officer (IO) pursuant to Army Regulation (AR)15-6, *Procedures for Investigating Officers and Boards of Officers* (October 2, 2006)<sup>3</sup> with a mandate to conduct an investigation into the IG-initiated complaint of alleged misconduct at the Fort Buchanan NEC. [TAB D].

Subsequently, the 7th Signal Command (Theater), IG also received a Department of Defense (DoD) IG Hotline case with the same allegations as those that had been previously received by the 7th Signal Command (Theater), IG. However, since they were the same allegations as those already being investigated by IO in the AR 15-6 investigation that had been initiated by the 106th Signal Brigade, there was no need to pursue another investigation or amend that effort.

Shortly thereafter, by letter dated March 4, 2014, the SA, through the Army Office of General Counsel (OGC), forwarded the OSC referral to the Commander, U.S. Army Network Enterprise Technology Command (NETCOM). [TAB E]. NETCOM subsequently referred the matter to the 7th Signal Command (Theater), its subordinate command, for investigation.

By email dated March 5, 2014, the Commander, 106th Signal Brigade, directed the IO to add the allegations set forth in the OSC referral letter to the ongoing AR 15-6 investigation because of the similarity of the allegations. [TAB F]. The IO received the formal addendum regarding the allegations made to OSC on March 27, 2014. In the interim, on March 13, 2014, the IO completed the AR 15-6 report of investigation (ROI).

## **BACKGROUND**

The investigation conducted in response to the OSC-referred allegations principally focuses on Mr. [NEC Director], the NEC Director, and his interactions with contract employees from GC&E Systems Group. To facilitate a better understanding of the facts and circumstances associated with the whistleblower allegations to the OSC, and the resultant findings and recommendations, it is helpful to understand the organizational structure and functions of the 7th Signal Command (Theater) and the Fort Buchanan NEC.

### **Organizational Structure of the Fort Buchanan NEC**

The Fort Buchanan NEC is located at Fort Buchanan, Puerto Rico. It includes twenty-three (23) Department of the Army Civilians (DACs) and twenty-one (21) contractors from GC&E Systems Group. [TABS 1 and 2]. The Fort Buchanan NEC is one of twenty-one (21) NECs assigned to the 106th Signal Brigade, whose headquarters is located at Joint Base San Antonio (JBSA), Fort Sam Houston, Texas. [TAB 3]. The twenty-one NECs are geographically dispersed throughout CONUS and Puerto Rico and are organized under four (4) Area Support Teams.

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<sup>3</sup> AR 15-6 promulgates guidelines for Army administrative investigations. Army commands and organizations frequently appoint investigating officers under provisions of AR 15-6 to investigate all manner of allegations and concerns. [TAB C].

The Fort Buchanan NEC is one of nine (9) NECs assigned to Area Support Team 3. The leadership for Area Support Team 3 is located at JBSA Fort Sam Houston along with the leadership of the other Area Support Teams. The Area Support Team 3's higher headquarters, the 106th Signal Brigade, is a subordinate brigade of the 7th Signal Command (Theater)<sup>4</sup> whose headquarters is located at Fort Gordon, Georgia. [TAB 3].

7th Signal Command (Theater) is the CONUS theater signal command and is one of the subordinate theater signal commands of the Network Enterprise Technology Command (NETCOM)/9th Signal Command (Army), whose headquarters is located at Fort Huachuca, Arizona. [TAB 3].

At all times relevant to the allegations and AR 15-6 investigation, NETCOM was a direct reporting unit (DRU)<sup>5</sup> to DA's Chief Information Officer (CIO)/G6; however, pursuant to General Orders (GO) No. 2014-02, dated March 6, 2014, NETCOM was disestablished as a DRU and reassigned, together with its authorities and responsibilities, subordinate elements, personnel, and resources to Second Army. Second Army is now a DRU to CIO/G6.<sup>6</sup> [TAB 4].

### **Mission of Second Army and Fort Buchanan NEC**

Second Army serves as the single point of contact for Army missions and functions related to reporting on, assessing, planning, coordinating, integrating, synchronizing, directing and conducting Army network operations. Subject to coordination with U.S. Army Cyber Command, Second Army plans, coordinates, integrates, synchronizes, directs and conducts network defense measures within all Army networks and, as directed, within Department of Defense Information Networks. Mindful of the Secretary's commitment to unity of effort, Second Army will maximize communication, coordination, and information sharing with the HQDA Chief Information Officer/G-6 and U.S. Army Cyber Command in the execution of these missions and functions.

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<sup>4</sup> 7<sup>th</sup> Signal Command (Theater) may also be referred to as "7<sup>th</sup> Signal Command."

<sup>5</sup> A direct reporting unit is defined in AR 10-87, *Army Commands, Army Service Component Commands, and Direct Reporting Units*, September 4, 2007, as an Army organization comprised of one or more units with institutional or operational support functions, designated by the SA, normally to provide broad general support to the Army in a single, unique discipline not otherwise available elsewhere in the Army. DRUs report directly to a HQDA principal and/or ACOM and operate under authorities established by the SA.

<sup>6</sup> It should be noted that an additional organizational structure/command matter is established in General Order 2014-2, specifically, it affirms that on 1 October 2010, the Secretary of the Army established U.S. Army Cyber Command as an operational Army force reporting directly to Headquarters, Department of the Army (HQDA). Subsequently, at the direction of the Secretary of Defense, the Secretary of the Army assigned U.S. Army Cyber Command to U.S. Strategic Command. The Secretary of Defense has designated U.S. Army Cyber Command as the Army Force Component Headquarters of U.S. Cyber Command, a sub-unified command of U.S. Strategic Command. Thus, U.S. Army Cyber Command is the primary Army headquarters responsible for cyberspace operations in support of Joint requirements and serves as the single point of contact for reporting and assessing Army cyberspace incidents, events and operations in Army networks, and for synchronizing and integrating Army responses thereto. U.S. Army Cyber Command, in coordination with Second Army, plans, coordinates, integrates, synchronizes, directs and conducts an integrated defense within all Army networks, and, as directed, within Department of Defense Information Networks. Mindful of the Secretary's commitment to unity of effort, the HQDA Chief Information Officer/G-6, U.S. Army Cyber Command and Second Army will maximize communication and information sharing in the execution of the missions and functions.

The mission of the Fort Buchanan NEC (hereinafter “NEC”) is to enable customer success through the operation and maintenance of command and control communication systems by embracing emerging information management technologies and methodologies. To that end, the NEC provides IT support to 12 Commands spread across the island of Puerto Rico. It plans for and, on order, conducts contingency operations as well as maintains garrison operational and situational awareness. Moreover, the NEC maintains liaison with mission commanders and leaders. Its additional responsibilities include: supporting 5,000 to 8,500 combined reserve and active component military and civilian employees across Puerto Rico and the outlying Caribbean DoD and non-DoD agencies; conducting daily operations to provide Enterprise Services support to mission commanders; maintaining and improving Enterprise Services, and infrastructure for those who live, work, and raise families at Fort Buchanan, Puerto Rico.

### *NEC Command Climate and a Blended Workforce*

The IO’s investigation delved deeply into the NEC Director’s “management style” and how his subordinates responded to him. Additionally, as a result of that inquiry, the issue of challenges inherent in a “blended workforce” comprised of both Department of the Army Civilians (DACs) and contractor employees was often mentioned by several of the witnesses as contributing to the “us” versus “them” attitudes that pervaded the NEC workplace. Hence, the dynamics of these seemingly unrelated issues somewhat complicated Mr. [NEC Director]’s ability to supervise and maintain “order and discipline” and respect for all members of this NEC “team.” Nevertheless, he sought to establish an “esprit d’ corps” within his blended workforce while adhering to the appropriate legal standards for working with contractor employees. Mr. [NEC Director]’s management style was to be direct and firm, in essence, a “no nonsense” manager.

Mr. [NEC Director] assumed the duties of the Director of the Fort Buchanan NEC in February 2013. Prior to that appointment, he had held several Information Technology (IT) positions, including several supervisory IT positions, at the 106<sup>th</sup> Signal Brigade in San Antonio, Texas, between 2009 and his assignment to Fort Buchanan.

Shortly after arriving at Fort Buchanan, Mr. [NEC Director] testified, in detail, as to the Town Hall meeting he held with the NEC staff. [TAB 5, Mr. [NEC Director], Statement, February 18, 2014]. There were numerous complaints submitted to him regarding the poor command climate that he “inherited” when he assumed the Director’s duties. Mr. [NEC Director] categorized those complaints into “four core areas requiring immediate leadership involvement/attention” which he categorized as “promotions and hiring actions”; “communications issues”; team work issues”; and “training deficiencies”. Specific examples from these four categories included the following areas: nepotism; unqualified applicants being hired; lack of training; lack of customer service mentality; lack of personal accountability; micromanagement; poor scheduling and last minute taskings; profanity; do away with the “24/7” shift since there was no operational need for it; and conflicts between DACs and contractors.

In response to the complaints, Mr. [NEC Director] implemented some new rules and enforced both the new and existing rules to include the following:

“no sleeping at the workplace, arriving late and/or leaving early is unacceptable, profanity at the workplace will not be tolerated, schedules will be published 90 days in advance, smoking will not be tolerated inside 50 feet from each facility, no cooking with open fires inside the facility, unplanned overtime will not be executed unless Operational Impact is determined/approved by NEC Director , one voice will represent the NEC via Operations center, CMEs [contractor manpower equivalents]<sup>7</sup> will no longer work without governmental representation, working between 2200 to 0600 and weekends will be shared between DACs and CMEs, ...No golfing on government time, no alcohol consumption at the work place, nepotism hiring will not be tolerated between DACs and CME’s,...cells phones are not authorized in a facility processing collateral information, lunch breaks will not exceed 60 minutes, personnel will not take 59 minutes on their own accord, employees will be respected and screaming will not be tolerated. Areas mentioned above are within Merit Principles, my employees are treated with respect and dignity at all times.”

Both testimonial and documentary evidence gathered during the AR 15-6 investigation revealed that a number of the interviewed witnesses were very unhappy with the command climate that developed when they first starting experiencing Mr. [NEC Director]’s management style. In his February 11, 2014 statement, Mr. [Network Specialist #3] described the situation as follows:

“Regarding the command climate at the Network Enterprise Fort Buchanan; I have noticed most peers and supervisors on edge and stressed since the arrival of our new director, Mr. [NEC Director]. I have felt some anxiety as a result of multiple tasks and changes implemented by Mr. [NEC Director]. However, I do understand that this is to be expected whenever a new administration takes over to correct deficiencies or to make processes more efficient. I am no stranger to change having served in the military for 21 years plus my 13+ years at this command as a civilian. Most of my peers have no military background and might not be accustomed to the aggressive character of Mr. [NEC Director] in taking charge. In my humble opinion the problem lies in that there are too many changes too quick considering that we are 1) going through a major data and voice network cutover preparation, 2) the shift from an easy going routine from the previous administration as compared to the gung ho nature of the present, 3) the diminishing of personnel over a span of seven years through layoffs of contractors and death, retirement, or transfers of DAC employees, 4) the lack of experience of some younger employees, and 5) the sustained operation with increased tasking with this diminishing workforce. All have an effect on people that may cause mental, physical, and emotional stresses of the workforce making them less productive. The cultural differences play an important factor

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<sup>7</sup> Contractor Manpower Equivalents or “CMEs” is a term utilized within the DoD when specifically referencing the manpower work load equivalent of work performed by contractor employees, but, it is also a term used to reference contractor employees, in general.

from that in the mainland, and other people being assigned to Fort Buchanan have met with similar experiences.”

On the other hand, Mr. [106th Staff Member], a civilian employee who had worked with Mr. [NEC Director] at Fort Sam Houston, San Antonio, Texas, just prior to Mr. [NEC Director]’s move to Fort Buchanan, stated in his March 10, 2014 statement the following about Mr. [NEC Director]’s management style which was in essence, a “take charge” approach to management:

“Mr. [NEC Director]’s leadership produced an environment that set the conditions for successful accomplishment of every mission assigned to the 106th Operations Center. While tenaciously driven to improve the processes and communication by which tasks were assigned, actioned and reported, his assertive style of leadership and task management clashed with many subordinates unaccustomed to such a personality. Mr. [NEC Director]’s energy and detail oriented focus on all aspects of a task was often perceived by many in the Ops Center as micromanagement and detrimental to the professional competence and professional development of the team. Despite the numerous clashes in personality, Mr. [NEC Director] was an unfailing advocate for every one of his subordinates, whether it was a professional matter or a personal family issue. Some positive improvements implemented by Mr. [NEC Director] in the 106th Operations Center include: Standardization of incident reporting thresholds and formats to senior leaders, refinement of multilateral communications across various agencies and development of Ops Center to Brigade staff validation process relating to management of assistance requests, RFIs, and task orders. A few changes that I would recommend to Mr. [NEC Director]’s leadership style include: recognition of morale deterioration in team resulting from approach to management, the ability to empower subordinate leaders to accomplish tasks without intrusive oversight and an acceptance of resource limitations when volunteering for additional tasks from other staff sections.”

Lastly, another perspective is provided by Ms. [GC&E Site Lead], the Site Lead for the GC&E contract at the NEC Fort Buchanan, and Mr. [GC&E Program Manager], the GC&E Program Manager for the NEC Fort Buchanan contract. In a memorandum for record (MFR),<sup>8</sup> dated February 12, 2014, the IO summarized Ms. [GC&E Site Lead] and Mr. [GC&E Program Manager]’s testimony on Mr. [NEC Director]’s management style as follows:

“[GC&E Site Lead] explains Command Climate as fine when she talked about it with her staff. She had a meeting with her staff about three weeks prior to me conducting the interview. When I asked how the climate was compared to two

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<sup>8</sup> It should be noted that the IO received testimony from Ms. [GC&E Site Lead] and Mr. [GC&E Program Manager] and captured it in both a 1-1/2 hour audio tape as well as in the above referenced MFR.

(2) years ago she thought it was the same. She did state that the staff has been doing more things, more taskings. She goes on to explain what they do now to view and monitor the networks is on a computer screen compared to looking at the actual equipment as they did before. [GC&E Program Manager] explains the differences between leadership styles. He said with the previous Director the atmosphere was more laid back, less strict. Mr. [NEC Director] runs a professional outfit that the contract meets his requirements as stated in the contract and he is very by the books. Differences are that the people that did not work very hard in the past now have to work. We have a few personnel that are being influenced by DACs. [GC&E Site Lead] states that she hears rumors all the time, and that she sees GC&E employees talking the DACs behind buildings. Both [GC&E Site Lead] and [GC&E Program Manager] agree with the approach Mr. [NEC Director] is using. [GC&E Site Lead] goes on to explain that the operational reporting is done with an EXSUM [Executive Summary] now, no longer using email anymore. She perceives this as the NETCOM way. Now the contractors have to learn and change to the new formats, which is something they never had to do before. This is the way we have to process things to the 106<sup>th</sup>. In summary, the environment has changed to a more professional structure and personnel are held more accountable. [GC&E Site Lead] states that she cannot say no to change.”

## **APPLICABLE LAWS, RULES AND REGULATIONS, AND RELEVANT CONTRACT AUTHORITIES GOVERNING CONTRACTS AND INTERACTION WITH AND RECOGNITION OF CONTRACTOR EMPLOYEES**

Generally, the Federal Government is required to recruit its employees either through hiring under competitive appointment or through procedures otherwise required by the civil service laws.<sup>9</sup> Federal employees are persons who are appointed, supervised by a federal officer, and perform federal functions pursuant to authorization from a congressional act or executive order.<sup>10</sup> There is a “long-standing rule that persons performing purely personal services for the Government must be placed on Government payrolls and made subject to [government] supervision.”<sup>11</sup> Consequently, the Government may not enter a contract for personal services unless it has received explicit Congressional authorization.<sup>12</sup>

The most basic codified definition of a personal services contract comes from the Federal Acquisition Regulation (FAR): “Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government Employees ...”<sup>13</sup> The extremely fact-specific nature of the determination as to whether a contractor employee is performing a personal services contract or a non-personal services

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<sup>9</sup> See Civil Service Act, Title 5, USC, Sections 3301-3397, 7301 (2006).

<sup>10</sup> Title 5, USC, Section 2105(a).

<sup>11</sup> Pers. Servs. Private Contract v. Gov’t Pers.-Statutory Emp’t Ceilings, 32 Comp. Gen. 427, at 430 (1953).

<sup>12</sup> FAR 37.104 (a) and (b).

<sup>13</sup> FAR 2.101.

contract makes the analysis both simple and complex. Indeed, in any given scenario, reasonable minds easily could differ about whether to characterize an employment situation as being executed or performed as a personal services or a non-personal services contract manner.

Over the years, however, the personal services contracts ban has become a relatively consistent and clear formulation: “In simple terms, this means that the [g]overnment cannot hire contractors to be used in the same manner as a government employee, nor can supervisors exercise similar control and management authority over contractor personnel as they may a government worker.”<sup>14</sup> When determining whether such services contracts are proper, the FAR cautions that “[e]ach contract arrangement must be judged in the light of its own facts and circumstances . . . .”<sup>15</sup> Whether the Government “exercise[s] relatively continuous supervision and control over the contractor personnel performing the contract” becomes the determinative factor.<sup>16</sup> A personal services contract can arise under the contracts terms or “in the manner of its administration during performance.”<sup>17</sup>

Whether the government’s treatment of a non-personal service contract employee crosses the line and creates an impermissible employer-employee relationship must be judged in light of the particular circumstances. The key question is whether the government exercises relatively continuous supervision and control over the contractor personnel performing the contract at issue. Accordingly, FAR 37.104(c)(2) states, “The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant . . . .”

To assist agencies in making the fact-specific determinations required for each circumstance, FAR 37.104(d) lists criteria to be applied when analyzing “whether or not a proposed contract is personal in nature.” The criteria include:

- (1) Performance on site;
- (2) Principal tools and equipment furnished by the government;
- (3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission;
- (4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel;
- (5) The need for the type of service provided can reasonably be expected to last beyond 1 year;
- (6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, government direction or supervision of contractor employees in order to—
  - (a) Adequately protect the Government's interest;
  - (b) Retain control of the function involved; or
  - (c) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

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<sup>14</sup> Glenn J. Voelz, *Contractors in the Government Workplace: Managing the Blended Workforce* 51 (Gov't Inst. Press 2010).

<sup>15</sup> FAR 37.104(b).

<sup>16</sup> FAR 37.104(c)(2) (referring to that inquiry as “the key question”); see also *Consultant Servs., T.C. Assocs.*, B-193035, 79-1 CPD ¶ 260, at 1 (Comp. Gen. Apr. 12, 1979).

<sup>17</sup> FAR 37.104(c).

The presence of *any or all* of the above elements in the performance of a contract intended to be for non-personal services could create an improper employee-employer relationship, but as the Government Accountability Office (GAO) found in a 2008 study “[s]uch a finding can only be established based on a case-by-case analysis of the totality of the circumstances of each case.”<sup>18</sup> The GAO did acknowledge that the primary consideration for determining whether a personal services contract exists is not whether such a contract exists by its terms, but rather the nature of the relationship between the contractor and the Government in practice.

For instance, in *W.B. Joley*, B-234146, March 31, 1989, 89-1 CPD ¶ 339, the protester alleged that the proposed contract would lead to a personal services contract because—

“among other things, the government provides the workplace and the tools to be used and establishes the workhours and the work to be done . . . [and] essentially, that the presence of certain elements listed in [FAR] 37.104(d) . . . as factors to be considered in assessing whether a proposed contract is personal in nature renders the contract a personal services contract.” *Id* at 2.

The GAO disagreed and held that the

“‘key question’ in determining whether a contract is for personal services is: ‘Will the government exercise relatively continuous supervision and control over contractor personnel performing the contract . . . we do not think the presence of these factors *per se* (emphasis in original) renders the contract a personal services contract.’” *Id* at 3.

The elements in FAR 37.104(d) are not the exclusive list of characteristics of an employer-employee relationship although they are “indicia of continuous supervision and control of contractor personnel by the government.” In the *Joley* case, the GAO stated, “[f]actors such as the contractor’s right to hire and fire employees, to grant or deny individual leave requests, and to reassign [contractor] employees negate the existence of a personal services contract as defined in the FAR.”

### *Performance of Inherently Governmental Functions*

#### **FAR Part 7.5, Inherently Governmental Functions, § 7.503 Policy.**

- (a) Contracts shall not be used for the performance of inherently governmental functions.
- (b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

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<sup>18</sup> U.S. Government Accountability Office, GAO-08-360, *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*, at 15 (2008).

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

- (1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
- (2) Services that involve or relate to reorganization and planning activities.
- (3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
- (4) Services that involve or relate to the development of regulations.
- (5) Services that involve or relate to the evaluation of another contractor's performance.
- (6) Services in support of acquisition planning.
- (7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
- (8) Contractors providing technical evaluation of contract proposals.
- (9) Contractors providing assistance in the development of statements of work.
- (11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).
- (12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
- (13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

### *The Proper Role and Duties of the Contracting Officer and the Contracting Officer's Representative*

The Department of Defense (DoD) relies heavily on the private sector to carry out aspects of the Department's mission. Because of the critical reliance on contractor support and the large expenditures involved, contract surveillance is vital to ensuring that contractors provide quality

services and supplies in a timely manner; to mitigating contractor performance problems; and to ensuring that the Federal Government (Government) receives best value for the Warfighter.<sup>19</sup>

Under the Federal Acquisition Regulation (FAR), the Contracting Officer is responsible for all contracting actions, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. The FAR, however, also recognizes that the Contracting Officer may need advice and assistance in areas of audit, law, engineering, information security, transportation, and other fields, as appropriate.

Contract quality surveillance also is an essential activity for which the Contracting Officer may require assistance. With assistance from the contracting office, the requiring organization — the organization most familiar with the technical complexities and nuances of the requirement — bears a heavy share of the contract quality surveillance burden. As experts on the contract requirement, members of the requiring organization may be granted specific authority by the Contracting Officer to conduct contract surveillance as a Contracting Officer's Representative (COR).

A COR's *raison d'être* is verifying that the contractor is fulfilling the contract requirements and then documenting that performance. CORs monitor contract performance and provide the Contracting Officer with documentation that identifies the contractor's compliance or noncompliance with the terms and conditions of the contract. A COR should document as much as possible about contract performance including conversations and meetings with the contractor, contractor performance, or any other issues. As the subject matter experts and the on-site contact for the Contracting Officer, who may be in a completely different location, CORs essentially function as the eyes and ears of the Contracting Officer and they are liaisons between the Government and contractor. Note, however, that contract surveillance is not solely the responsibility of the Contracting Officer and the COR. Others may have designated surveillance responsibilities under Parts 42, 45, or 46 of the FAR.

DFARS 252.201-7000 defines a COR as "an individual designated in accordance with subsection 201.602-2 of the DFARS and authorized in writing by the Contracting Officer to perform specific technical and administrative functions." According to FAR 1.602-2(d) CORs:

- (1) Shall be a Government employee, unless otherwise authorized in agency regulations;
- (2) Shall be certified and maintain certification in accordance with the current Office of Management and Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance, or for DoD, in accordance with the current applicable DoD policy guidance;
- (3) Shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures;
- (4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

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<sup>19</sup> A more fuller discussion of the roles and responsibilities of the Contracting Officer and the COR are contained in a publication entitled *COR Handbook*, dated March 22, 2012, issued by the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

- (5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions;
- (6) Shall be nominated either by the requiring activity or in accordance with agency procedures; and
- (7) Shall be designated in writing, with copies furnished to the contractor and the contract administration office—
  - (i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
  - (ii) Identifying the limitations on the COR's authority;
  - (iii) Specifying the period covered by the designation;
  - (iv) Stating the authority is not re-delegable; and
  - (v) Stating that the COR may be personally liable for unauthorized acts.

Additionally, according to the Department of Defense *COR Guide*, the COR also shall:

- Establish and maintain individual COR files for each contract in accordance with DFARS PGI 201.602-2(ii). COR files shall be available for review by the Contracting Officer, Inspector General, the U.S. Government Accountability Office, internal review officials or other officials as authorized by the Contracting Officer;
- Review and understand terms and conditions of the contract;
- Perform COR duties/responsibilities as designated by the Contracting Officer;
- Not appoint, designate, re-designate or sub-designate COR duties/responsibilities to other persons;
- Provide reports on contract performance to the Contracting Officer. If advised by the Contracting Officer that reports are inadequate, ensure that follow-on reports address issues expected by the Contracting Officer to meet the adequate standard in the QASP;
- When advised by Contracting Officer/COR management that COR designation will be terminated, ensure all reports/records/communications are made available to management, the successor COR and the Contracting Officer; and,
- If circumstances change and there is a reasonable expectation that the COR cannot perform effectively, (i.e., personal COI, change in assignment, etc.), notify COR management and the Contracting Officer to request that a successor COR be designated.

#### ***Authorized Recognition of Contractor Employee/Contract Performance***

Because of DoD's critical reliance on contractor support in executing the Department's missions, and given the large expenditures involved, contract surveillance is vital to ensuring that contractors provide quality services and supplies in a timely manner; to mitigating contractor performance problems; and to ensuring that the Federal Government receives best value.<sup>20</sup>

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<sup>20</sup> A more expansive discussion of the roles and responsibilities of the Contracting Officer and the COR are contained in the *DoD COR Handbook*, dated March 22, 2012, issued by the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense, dated March 22, 2012, retrievable at [http://www.acq.osd.mil/dpap/cpic/cp/docs/USA001390-12\\_DoD\\_COR\\_Handbook\\_Signed.pdf](http://www.acq.osd.mil/dpap/cpic/cp/docs/USA001390-12_DoD_COR_Handbook_Signed.pdf).

Under the FAR, the Contracting Officer is responsible for all contracting actions, ensuring compliance with the terms of the contract, and safeguarding the interests of the U.S. Government in its contractual relationships. Contract quality surveillance is an essential duty of every Contracting Officer. The requiring organization—the organization most familiar with the technical complexities and nuances of the requirements associated with the contract—also bears a heavy share of the contract quality surveillance burden. As experts on the contract requirements, members of the requiring organization may be granted specific authority by the Contracting Officer to conduct contract surveillance as a Contracting Officer’s Representative (COR). A COR serves as the on-site “eyes and ears” of the Contracting Officer, verifying that the contractor is fulfilling the contract requirements and documenting that performance.

The basic tenets of fiscal law provide that: government agencies may use appropriated funds only for the “purpose” for which Congress appropriated them, the obligation of funds must occur within the time limits applicable to that appropriation, and the amount of the obligation and expenditure must not exceed the amounts Congress has appropriated. All three elements: purpose, time, and amount, must be observed for an obligation or expenditure of appropriated funds to be lawful.

It is axiomatic that government contractors receive their awards and recognition whenever the government pays the contractor for having completed the terms and conditions of the contract. Some forms of government contract provide incentive “fees” or “awards” for certain performance milestones or accomplishments such as completing a project ahead of schedule or under budget. Nevertheless, personnel within government often desire to provide some sort of recognition to individual contractors for the contributions they may have made towards mission accomplishment. However, awards programs in the federal government are based on statutes. Specific statutes authorize the establishment of awards programs for military and civilian personnel of the Army, and the expenditure of appropriated funds in furtherance of such award programs. For instance, sections 1124–1125 of Title 10 of the United States Code (U.S.C.) address military award/recognition programs, and 5 U.S.C. 4511–4513 address civilian award/recognition programs.

In contrast, there exists no statutory authority permitting the award of Commander's coins, certificates of appreciation, or similar nonmonetary incentives to contractors. Rather, DoD and Army manuals, regulations, and policies expressly prohibit such awards. The *DoD COR Handbook* goes so far as to caution that the Government “cannot use certificates to recognize a contractor or individual contractor employees, because doing so could complicate the source selection process on future contracts” by . . . leading to allegations of bias, protest to the GAO, and delay.

Even though individual awards and recognition are prohibited, the Contracting Officer, COR, and the requiring activity have myriad ways in which to document and acknowledge contractor performance, whether it be negative feedback or “kudos.” Documenting how well a contractor performs on a contract is an essential part of the performance assessment process on which other Contracting Officers depend when evaluating a particular contractor’s submissions on future competitions. DoD policy directs CORs to provide regular performance comments to the Contracting Officer and notes that such comments should be “contractually based and

professional; applicable to the monthly reporting period; performance based; specific, fully detailed, and stand alone; based on information gathered during audits, when possible, and fully supported.” Further, comments should not be beyond the scope of the contract; request information that is not applicable to the contract; request contractor personnel actions (e.g., hiring, firing, or disciplinary action); personal (all comments are seen by higher leaders); or simply be copied and pasted from one month to the next without verifying whether the condition still exists.

Finally, Contracting Officers use information received from CORs to document contractor performance in performance assessment databases. Section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), enacted on October 14, 2008, requires the development and maintenance of an information system that contains specific information on the integrity and performance of covered federal agency contractors and grantees. The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to address these requirements. FAPIIS provides users with access to integrity and performance information consolidated from other systems such as the Contractor Performance Assessment Reporting System (CPARS), proceedings information from the Entity Management section of the System for Award Management (SAM) database, past performance information from the Past Performance Information Retrieval System; and suspension/debarment information from the Performance Information section of SAM. It is through these systems, and the regular payment of a contractor’s bills, that government contractors are authorized to receive acknowledgment of their performance.

### *Ethics Issues Associated with Contractors in the Workplace*

Showing favoritism towards contractor employees or taking actions that create the appearance that the federal employer is endorsing a contractor, including the presentation of awards, gifts, certificates of appreciation, or other forms of recognition to contractor personnel, is not only prohibited by Army Regulations governing departmental award programs, but are contrary to the principles of ethics and integrity that govern the Federal workplace. The *Standards of Ethical Conduct for Employees of the Executive Branch*, codified at Title 5, Code of Federal Regulations (CFR) and DoD (DoD) 5500.07-R, *Joint Ethics Regulation* (JER), retrievable at <http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf>, specify the ethics standards governing interaction by DoD military personnel and civilian employees with contractors and contractor employees.

In essence, a basic tenet of federal employment is that public service is a public trust. As provided for under 5 C.F.R. § 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this Part and in supplemental agency regulations.

It is primarily the ethics issue of prohibited “endorsements” that impacts on the appropriate arms length working relationship that must be observed in the Federal workplace between Federal employees and contractor employees.

The general rule on endorsements is provided at Title 5, CFR 2635.702(c)), which states:

“Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except: (1) In furtherance of statutory authority to promote products, services or enterprises; or (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.”

The JER, paragraph 3-209, in turn, states:

“Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity . . . .”

The “endorsements” concern, to include acts that foster an endorsement perception, has led to the general prohibition against giving awards, certificates of appreciation, or similar acts of recognition to contractor employees. In essence, such actions, which may appear to serve as recognition of a job well done or for outstanding performance, could be viewed by the public as conveying a special token of appreciation to those private sector contractors who “enjoy” or are “fortunate” to have a business relationship with the Federal Government.

Additional cautionary pronouncements with respect to what an award, a gift, a certificate of appreciation, or other forms of recognition represent are found in the Office of Government Ethics’ (OGE) August 29 2006 DAEO-Gram DO-06-023 entitled “*Ethics and Working with Contractors—Questions and Answers*. Attached to DAEO-Gram DO-06-023 is a 29-page “questions and answers” document. The following is a question and answer relevant to the instant discussion excerpted from page 29.

Question: May an employee provide a letter or other statement discussing the quality of a particular contractor’s performance?

Answer: Maybe. The OGE rule on endorsements, 5 C.F.R. § 2635.702(c), generally prohibits an employee from using his official position, title or authority to endorse any product, service or enterprise. Therefore, statements commending the performance of a contractor or contractor’s products generally are not permissible. However, the rule does not prohibit an employee from making a simple factual statement that the contractor’s work satisfied the Government’s requirements. . . . In addition to section 2635.702, there may be other policies or procedures, such as agency procurement or public affairs policies, that limit the

situations in which an employee may make statements about a contractor's performance.

Example: A contractor asks an employee for a letter stating that the contractor performed all its work under a particular contract. After consulting with the contracting officer, the employee provides a statement indicating that the contractor met all benchmarks, submitted all reports, and delivered a fully operational product to the agency. This would not be a prohibited endorsement, even if it is anticipated that the contractor will share the letter with prospective customers.

While none of the above references specifically concern the presentation of awards, certificates of appreciation, other forms of recognition to contractor employees, they do embody instructive ethics principles relevant in justifying the prohibition against presenting any such "endorsements" to contractor employees.

### *Actual or Perceived Conflicts of Interest*

One of the ethics issues associated with contractors in the federal workplace is the issue of actual or perceived conflicts of interest. The following provisions concern the actual or perceived conflicts of interest between contractors and federal government officials/personnel:

#### **1. Federal Acquisition Regulation (FAR).**

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.

##### *§ 3.1101. Definition*

"Personal conflict of interest" means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

- (1) Among the sources of personal conflicts of interest are—
  - (i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;
  - (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
  - (iii) Gifts, including travel.

- (2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

- (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
- (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
- (iii) Services provided in exchange for honorariums or travel expense reimbursements;
- (iv) Research funding or other forms of research support;
- (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
- (vi) Real estate investments;
- (vii) Patents, copyrights, and other intellectual property interests; or
- (viii) Business ownership and investment interests.

*§ 3.1102 Policy.*

The Government's policy is to require contractors to—

- (a) Identify and prevent personal conflicts of interest of their covered employees; and
- (b) Prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain.

**2. Department of Defense Instruction (DoDI) 1400.25, Enclosure 3, paragraph 11.b.2.**

To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with the DoD or with a DoD Component will not be granted recognition. The single exception is if the contribution is deemed to be unrelated to and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest. Recognition is limited to a letter or a certificate of appreciation to the individual or to the organization signed at the lowest applicable level of the organization.

*Establishing Contract Modifications*

**FAR Part 43, Contract Modifications, § 43.102 Policy.**

- (a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not—
  - (1) Execute contract modifications;
  - (2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or
  - (3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.

(b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.

## **SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION, AND AGENCY DISCUSSION**

The AR 15-6 IO conducted an extensive investigation of the eight allegations referred by OSC to the Army. All of the witnesses germane to the allegations were interviewed by the IO. Each witness interviewed in the context of the AR 15-6 investigation was asked to respond to a set of questions developed by the IO to solicit specific information relevant to the anonymous whistleblower's allegations. Further, when required for completeness or clarity, some of the witnesses were interviewed several times. It should be noted that several of the witnesses' testimony was captured in both written sworn statements as well in several audio tapes.<sup>21</sup> Additionally, the IO gathered over 350 documents and testimonial evidence in furtherance of his effort to thoroughly investigate the subject allegations. A summary of the testimony provided by the witnesses relevant to each of the eight OSC-referred allegations as well as the documents assembled as part of the investigation, and a discussion of the merits of each of the OSC-referred allegations in light of the testimonial and documentary evidence follow.

**OSC REFERRED ALLEGATION 1: Mr. [NEC Director], the NEC Director, improperly gave gifts (gift cards) and awards (including free lunches) to contract employees who are employed by GC&E Systems Group. These actions were improper in that they involved the expenditure of agency funds on contract employees' awards and created the appearance of an employee/employer relationship between contract employees and agency management.**

### *Summary of the Evidence Pertaining to Allegation 1*

There is no dispute that Mr. [NEC Director] presented awards to GC&E contractor employees. For example, Mr. [NEC Director] presented gift cards to Mr. [GC&E Employee #4] and Mr. [GC&E Employee #2] in June 2013 and a restaurant gift card to Mr. [GC&E Employee #1] in September 2013. The IO discovered no evidence that government funds were used to purchase the awards.

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<sup>21</sup> In addition to their written statements, Mr. [NEC Director], Mr. [Chief, Information Assurance], Ms. [GC&E Site Lead], Mr. [GC&E Program Manager], Mr. [Chief, IT Support], and Mr. [Chief, Business and Plans] provided testimony recorded in audio tapes, but none of that testimony has been transcribed to date. Collectively, over 12 hours of audio taped testimony was provided by all of these witnesses.

Ms. [GC&E Site Lead], GC&E site manager, Mr. [GC&E Program Manager], GC&E Program Manager, and Mr. [NEC Director] state that the awards were purchased by GC&E. While Mr. [NEC Director] states that he announced that the awards were presented on behalf of GC&E, none of the interviewed civilian employees recall the announcement. These employees perceived that Mr. [NEC Director] was showing favoritism to the contractor employees and assumed that Mr. [NEC Director] had purchased the awards with his own money.

### *Relevant Testimony Pertaining to Allegation 1*

Mr. [System Administrator]<sup>22</sup> IT Specialist (System Administration), NEC, testified on February 10, 2014 that on June 25, 2013, at Building 527, NEC Director, Mr. [NEC Director], presented awards to GC&E's "Top Performers" [GC&E Employee #2] and [GC&E Employee #4] that included Gift Cards to local restaurants. He also testified that photos of this award presentation were taken. The IO included copies of these photos as an exhibit in his ROI. Additionally, Mr. [System Administrator] stated that at on September 6, 2013, at Building 511, during a NEC Information Meeting, Mr. [NEC Director] made an award presentation to Mr. [GC&E Employee #1] for his "outstanding performance." Similarly, photos of this award presentation were also taken. The IO included photos from this event as an exhibit in his ROI. Further, during another situation, Mr. [System Administrator] testified that Mr. [NEC Director] had contractors compete to have lunch paid for by Mr. [NEC Director], when on September 25, 2013, Mr. [NEC Director] conducted a competition on "How to Fill an Inventory Form" DA 3161 in the least possible time. Mr. [NEC Director]'s rules were that the group that completed the inventory form faster than the other group would be invited to have lunch paid for by him. There was a tie between the two groups of contractors and the Contract Site Manager, Ms. [GC&E Site Lead], decided who would win the competition. The winning contractor team was lead by Mr. [GC&E Employee #1]. Among the GC&E employees who competed in Mr. [NEC Director]'s exercise were Ms. XX, Mr. XXY, Mr. XXZ, Mr. XYZ, Mr. [GC&E Employee #4], Mr. [GC&E Employee #1] and others.

Mr. [Chief, Business and Plans], Division Chief, NEC, testified on March 7, 2014 that he was present at the June 25, 2013 presentation when Mr. [NEC Director] presented to two GC&E contractor employees, Mr. [GC&E Employee #4] and Mr. [GC&E Employee #2], with cash gift cards. Mr. [Chief, Business and Plans] described the presentation by stating that Mr. [NEC Director] expressed his appreciation for the work performed by these two contractor employees. Further, he testified that though Mr. [NEC Director] did not state where the item/award came from, it was his "impression was that the gift cards were provided by him. At no point did he state that the awards/gift cards were being presented on behalf of the GC&E or any other source." Additionally, though to the best of his knowledge no government funds were used or expended, Mr. [NEC Director]'s remarks gave him impression that the award/gift cards were presented by him as being given by Mr. [NEC Director] personally. Finally, Mr. [Chief, Business and Plans] stated that his perception of the event what that it "showed or demonstrated Mr. [NEC Director]'s favoritism/preference of some specific contractors and also over civilians employees. His actions and attitude show a continued pattern and behavior" as the Director with influence on contractor related matters. Lastly, he testified that "Mr. [NEC Director]'s behavior, ethics,

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<sup>22</sup> Herein after Mr. [System Administrator] will also be referred to as "Mr. [System Administrator]" or "Mr. [System Administrator]."

integrity and legality on these matters is very questionable.” Mr. [Chief, Business and Plans] made similar comments about Mr. [NEC Director]’s award presentation which occurred in September 2013 when Mr. [NEC Director] presented cash gift cards to Mr. [GC&E Employee #1], a contractor employee.

Also, Mr. [Network Specialist #1], IT Specialist (Network), testified on March 10, 2014 that he was present at the June 25, 2013 presentation. He stated that Mr. [NEC Director] had sent a message to all Department of the Army civilian (DAC) employees at B376 to report to Building 527 so he could present a cash award to both Mr. [GC&E Employee #2] and Mr. [GC&E Employee #4]. Mr. [Network Specialist #1] described this session as a “the town hall meeting style (all NEC personnel mandated participation).” Further, he testified that Mr. [NEC Director] basically spoke about their great performance, presented them with the awards, but did not address where the awards came from, essentially, he just “expressed what a great job” they did and presented the awards to the contractor employees. Also, Mr. [Network Specialist #1] testified that he was not aware if any government funding was used for the award. Mr. [Network Specialist #1]’s perception of this event was that “Mr. [NEC Director] should give awards only to DAC employees not contractors. No awards have been issue to DAC employees by Mr. [NEC Director] in the past year that I am aware of. I believe the awards should have been presented by the contractors’ company not by a DAC director. Lastly, Mr. [Network Specialist #1] testified that he was not present at the September 2013 award presentation conducted by Mr. [NEC Director].

Another NEC employee, Mr. [Network Specialist #2], IT Specialist (Network), attended the June 25, 2013 award session when in front of NEC personnel gathered for the event, Mr. [NEC Director] called two contractor employees, Mr. [GC&E Employee #4] and Mr. [GC&E Employee #2], to the front of the assembled group and presented a gift award to each in appreciation for their performances. Mr. [Network Specialist #2] stated that he could not recall where Mr. [NEC Director] stated where the award came from nor was he aware if any government funding had been used to purchase the award. Further, he testified that his perception of the event was that “[t]he event took me by surprise because I was always told that DAC supervisors could not present awards to contractors. It had to be presented by personnel from their company. I am not exactly sure why they got the award or what they did to earn it. It seemed to me that they got it for doing their work. Well, there is a lot of other employees at the NEC (DAC/Contractors) that do excellent work every day and very seldom does anyone get recognized.” Lastly, with respect to the award presentation held in September 2013, Mr. [Network Specialist #2] testified that Mr. [NEC Director] called Mr. [GC&E Employee #1] to the front of the room and presented him with a gift certificate for good performance. Mr. Vasquez testified that Mr. [NEC Director] never stated where the item/award came from nor was he aware if any government funding was used for the award. His perception of the event was that “[a]gain, the event took me by surprise” for the same reasons he stated relative to the June 2013 award event.

NEC employee, Mr. [Chief, IT Support] , Chief, IT System Support, testified with respect to the June and September 2013 award sessions recalling the events that transpired and his sentiments toward those events similar to the testimony provided by the other NEC employees. Though he did not attend the June 2013 award ceremony, with respect to the September 2013 event, he, too, testified that he was left with the “impression that the gift cards

were provided” by Mr. [NEC Director], and, that “at no point did he state that the awards/gift cards were presented on behalf of the GC&E (Contractor).”

Further, NEC employee Mr. Information Security Specialist #2, IT Specialist, INFOSEC, testified that he attended both award ceremonies both in June 2013 when Mr. [NEC Director] gave cash awards /gift cards to two contractor employees, Mr. [GC&E Employee #2] and Mr. [GC&E Employee #4], which were Visa gift cards each worth \$50.00 and in and September 2013 when contractor employee, Mr. [GC&E Employee #1], was given a Longhorn gift card valued at \$50.00. Mr. Information Security Specialist #2 said that Mr. [NEC Director] was the only person giving the awards and that it was never stated where the item/award came from. Further, he testified that his perception was “that it was that is all his idea and he bought them” and that “[t]his is just a public display of his favoritism towards [GC&E Employee #1].” Lastly, he stated that he was not aware if any government funding was used to purchase those awards/gifts.

Lastly, Mr. [NEC Director], Director, NEC, testified on March 7, 2014 with respect to the issue of presenting items/awards to contractor employees. Mr. [NEC Director] testified that in June 2013 and September 2013, the following occurred:

“items were purchased by GC&E leadership, during the announcement while alongside GC&E leadership I stated ‘this award is presented on behalf of GC&E...Some items were gift cards and others were cash handouts (e.g. Dec 2013 GC&E Holiday gathering), all were funded/provided by GC&E. Cash handouts never exchanged hands between GC&E and I...the purpose for the presentation of the award...[was] determined by GC&E (longevity, performance, etc...)...[no] government funding was used for the item/awards.”

When asked by the IO if there is an established award program to award contractors, he answered “no.” However, with respect to an established award program to award DACs, he testified that there were only a few examples of awards being given to DACs and expressed the following sentiments on that matter that he had shared in an email to Mr. [Chief, Business and Plans] (Deputy NEC Director) on May 21 2013:

“[Chief, Business and Plans],

Over the past several months we've witness several personnel receive recognition for their superior performance. Any reason why we have not submitted any of our superstars? Are we so busy that we're not able to take a knee/30 minutes and write about the accomplishments/performance/creativity/exuberance/attitude/self development/teamwork/educational enhancement/etc?

I've been here almost four months and can identify several TOP performers:  
[names redacted]

I'm sure all of you can identify countless accomplishments every Team member has accomplished this FY let alone the previous times each and every one of us has acknowledged their superior performance by stating "Thank you" or a pad on their shoulder as a gesture for their commitment to restoring the Network or

finding the solution impacting every member tied to our network. The number of TT's resolved over the last 90 days and ICE comments depicting the superior customer service. Even the execution of IDIQ, copier forensics saving our main customer over \$50K annually, expediting CAFE 151 install, 1300 and 1301 deployment, and finally the hundreds of items we have identified on our property books.

Let's do the right thing for our people and get them recognized.

[Administrative Assistant],

Get a copy of the requirements and next window of opportunity, relay message to every member within the NEC that they have the ability to nominate their Teammates/peers as well.”

### *Summarized Army Findings*

After review and analysis of all available testimonial and documentary evidence pertinent to the eight OSC referred allegations, the Army determined the merits of these allegations as detailed below.

### *Discussion of Allegation 1*

Mr. [NEC Director] made public presentations in the government workplace to GC&E contractor employees on two different occasions. On June 25, 2013, Mr. [NEC Director] sent a message to his subordinate employees directing them to report to Building 527. At this gathering of Army and contractor employees, Mr. [NEC Director] presented \$50 cash gift cards to two GC&E employees, Mr. [GC&E Employee #4] and Mr. [GC&E Employee #2]. A photograph was taken to memorialize the presentation. During the investigation Mr. [NEC Director] explained the gifts cards were provided by GC&E to recognize their employees. No GC&E personnel, other than the two recipients, participated in the presentation. There is no evidence that government funds were used to purchase the gift cards.

Although Mr. [NEC Director] asserts that he announced during the presentation that he was presenting the gift cards on behalf of GC&E, none of the other Army employees interviewed recall such an announcement. Instead, Army and contractor employees at the presentation perceived that Mr. [NEC Director] had purchased the gift cards with his own money and was presenting them as awards to express his appreciation for the GC&E employees' good performance. Some Army employees viewed the gift card presentations as favoritism by Mr. [NEC Director] towards the GC&E employees. Army witnesses complained Mr. [NEC Director] should have been giving awards to Army employees, not contractor employees.

Similarly, on September 6, 2013, during a meeting of Army employees at Building 511, Mr. [NEC Director] publicly presented a \$50 restaurant cash gift card to GC&E employee Mr. [GC&E Employee #1]. A photograph was taken of the presentation. Mr. [NEC Director] states the gift card was provided by GC&E to recognize Mr. [GC&E Employee #1] performance. No GC&E personnel, however, other than Mr. [GC&E Employee #1], participated in the presentation. There is no evidence that government funds were used to purchase the gift card.

Mr. [NEC Director] asserts he announced he was presenting the gift card on behalf of GC&E. None of the Army employees interviewed during the investigation recall such an

announcement. Instead, Army employees at the presentation again perceived that Mr. [NEC Director] had purchased the gift card with his own money to award Mr. [GC&E Employee #1] for his good performance. Some Army employees viewed the gift presentation as favoritism by Mr. [NEC Director] towards the GC&E employee.

As previously noted above, showing favoritism towards contractor employees or taking actions that create the appearance that the federal employer is endorsing a contractor, such as the presentation of gifts, certificates of appreciation, or other forms of recognition to contractor personnel, including the presentation of contractor purchased gifts and awards by Army personnel to contractor employees is contrary to both the Standards of Conduct that govern the ethics and integrity in the Federal workplace and to Department of Defense (DoD) policy on recognizing contractor performance. The *Standards of Ethical Conduct for Employees of the Executive Branch*, codified at Title 5, Code of Federal Regulations (CFR) and DoD (DoD) 5500.07-R, *Joint Ethics Regulation* (JER), retrievable at <http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf>, specify the ethics standards governing interaction by DoD military personnel and civilian employees with contractors and contractor employees. Further, the standards of ethical conduct and DoD policy concerned with prohibited “endorsements” establish guidance to ensure an appropriate arms length working relationship is observed in the Federal workplace between Federal employees and contractor employees.

In essence, a basic tenet of federal employment is that public service is a public trust. As provided for under 5 C.F.R. § 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained and in supplemental agency regulations.

The ethics concern with prohibited “endorsements” is specifically reflected in the appropriate arms length working relationship that must be observed in the Federal workplace between Federal employees and contractor employees.

The general rule on endorsements is provided at Title 5, CFR 2635.702(c), which states:

“Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except: (1) In furtherance of statutory authority to promote products, services or enterprises; or (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.”

The JER, paragraph 3-209, in turn, states:

"Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity . . . ."

The "endorsements" concern supports the general prohibition against presenting awards, gifts, certificates of appreciation, and other forms of recognition to contractor employees. In essence, these actions suggest recognition for a job well done or for outstanding performance, and can be reasonably viewed by the public as conveying a special token of appreciation to those private sector contractors who "enjoy" or are "fortunate" to have a business relationship with the Federal Government.

Similarly, guidance fostering these principles is found in the most recent DoD pronouncement on awards for contractor employees whereby DoD tightened the rules as to the extent to which a DoD organization can recognize actions taken by contractor employee that are separate and apart from meeting a contractual requirement. DoDI 1400.25-M, Civilian Personnel Management, Subchapter 451, Awards, December 1, 1996, SC451.15.2.2., states:

*"Persons or organizations having a commercial or profitmaking relationship with the Department of Defense or with a DoD Component shall not be granted recognition, unless the contribution is substantially beyond that specified or implied with the terms of the contract establishing the relationship, or the recognition is clearly in the public interest."*

This instruction, which was in effect in 2013 when Mr. [NEC Director] presented the gift cards to the GC&E employees, has been amended in DoD Instruction 1400.25, DoD Civilian Personnel Management System: Awards, 4 November 2013, Enclosure 3, paragraph 11.b.(2), to make the concerns regarding displays of favoritism and improper endorsements more clear:

*"To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with the DoD or with a DoD Component will not be granted recognition. The single exception is if the contribution is deemed to be unrelated to and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest. Recognition is limited to a letter or a certificate of appreciation to the individual or to the organization signed at the lowest applicable level of the organization."*

Applying the above principles and rules, and under the facts as presented by the testimonial evidence, it appears Mr. [NEC Director], in his capacity as the NEC Director, used his official position to either endorse the performance of the certain contractor employees, imply his official endorsement of their contract performance, or imply preferential treatment of the contractor employees by presenting cash gift cards (as awards) to them in work place gatherings. This is so even though Mr. [NEC Director] did not present an official looking DoD or Army award or certificate to the contractor employees. Mr. [NEC Director]'s actions implied he was

“recognizing” them by presenting an award to them. He used his official position to “recognize” them by presenting awards on behalf of the contractor employer to the contractor’s employees at the NEC’s work place gathering on two separate occasions. Regardless whether Mr. [NEC Director] stated that the awards were being presented on behalf of GC&E, the presentations clearly created the reasonable perception that he was endorsing the contractor employees’ performance or that he was displaying favoritism toward certain contractor employees.

Under the facts provided, despite what were probably the best and most innocent of intentions, Mr. [NEC Director]’s actions created a reasonable perception that he was either endorsing the performance of certain contractor employees, or that he was showing favoritism towards those contractor employees or their contractor employer. Therefore, the finding is Mr. [NEC Director] violated both 5 CFR 2635.702(c) and DoD 5500.07-R, paragraph 3-209 when he used his official position to present awards to contractor employees at two separate work place gatherings. Further, it is a reasonable conclusion that he violated the spirit and intent of the revised DoD guidance as well which provided clarification with respect to the appropriateness of recognizing contractor employee performance as being subject to the single exception that “if the contribution is deemed to be unrelated to and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest. Recognition is limited to a letter or a certificate of appreciation to the individual or to the organization signed at the lowest applicable level of the organization” rather than the previous standard in effect during the award period in question which read “unless the contribution is substantially beyond that specified or implied with the terms of the contract establishing the relationship, or the recognition is clearly in the public interest.”

In effect, Mr. [NEC Director] presented an award on behalf of a contractor – who should have been the appropriate party to present the cash gift cards and say “Thanks for the great job!”

#### **Conclusion. Army Findings as to Allegation 1:**

This allegation is PARTIALLY SUBSTANTIATED.

With respect to the part of the allegation that Mr. [NEC Director] improperly gave gifts (gift cards) and awards (including free lunches) to GC&E contract employees in that they involved the expenditure of agency funds, this portion is unsubstantiated. There is no evidence that government funds were used to purchase the subject cash gift cards or free lunches.

However, with respect to that part of the allegation that Mr. [NEC Director]’s *presentation* of awards or gifts to the GC&E contractor employees was improper because Mr. [NEC Director] improperly engaged in conduct that created the *appearance* that he was endorsing the contractor employees or showing favoritism towards them, this portion is substantiated. Clearly, no matter how well intentioned Mr. [NEC Director] was in seeking to recognize the contractor employees performing contract work for NEC as part of the “team,” his *conduct* in presenting the cash gift cards to them *in the workplace gatherings* was not in accord with 5 CFR 2635.702(c) and DoD 5500.07-R, paragraph 3-209, and the spirit and intent of DoD policy guidance, in that, at a minimum, they created a reasonable perception that he was endorsing contractor employees.

Had Mr. [NEC Director] “personally” wished to recognize contractor employees for their contributions to the mission of the NEC, he should have coordinated his proposed actions with the appropriate Contracting Officer or COR to ensure that any such recognition took the form of a factual “Letter of Input” to the contractor organization, which then the contractor may have elected to recognize one or more of its contractor employees on an individual basis. Further, it would have been appropriate for Mr. [NEC Director], or other members of the NEC management, to provide the Contracting Officer or COR with specific, detailed, stand alone, and fully supported information about contractor employee performance—whether in the form of “negative feedback” or kudos—to facilitating the documentation of same in established contractor performance assessment databases (as described in the *DoD COR Handbook*), as part of the contract quality surveillance process.

**OSC REFERRED ALLEGATION 2: Government-sponsored Avaya Voice training was improperly provided to contract employees (Mr. [GC&E Employee #1], Mr. [GC&E Employee #3], and Mr. [GC&E Employee #2]) between September 20, 2013, and October 4, 2013.**

### *Summary of the Evidence Pertaining to Allegation 2*

Mr. [NEC Director] assumed his position as the NEC Director on February 10, 2013. Prior to his arrival, an ongoing contract with GC&E (W91RUS-08-D-0004) that had been in place with the Fort Buchanan NEC since November 6, 2007 contained the following task, as was described in the subject contract’s Executive Summary:

“This acquisition for operation and maintenance (O&M) for Directorate of Information Management (DOIM) communication systems identified in this Performance Work Statement and specified in individual task orders. Support required will include the following: Administrative Telephone Services (ATS) such as Switchboard Console Operations; Inside Plant; Customer Services (Telephone); Outside Plant (Cable); and Information Technology Services (TSC) such as LAN Administration and System Maintenance, Help Desk Assistance, Software installation, hardware and software troubleshooting, and web master support; Video Teleconferencing (VTC) support to include establishing and scheduling of VTCs; Defense Message Switching (DMS) operation; Technical Control Facility(TCF) operations and maintenance (O&M) to include the TCF matrix switch; Configuration Management of the installation infrastructure to include creating and updating drawings using Computer-Aided Drawing (CAD) engineering support; ;and Land Mobile Radio (LMR) Network Management, and Control System (Master Controller Management).”

Further, GC&E contract, W91RUS-08-D-0004 provides that the government will fund training for new equipment for current contractor employees subject to the following provisions:

#### **C.1.2 TRAINING.**

C.1.2.1 The contractor shall provide all training to ensure contractor personnel maintain technical proficiency for the O&M of the systems and equipment listed in Attachment 1 of installation task orders. Training for existing equipment shall be provided at no additional cost to the Government. The Government will not provide or fund training to obtain certification for new contractor employees.

**C.1.2.2 If during the term of this contract, the Government installs new equipment that requires training to meet the certification requirements of this contract, the Government will provide one-time training** (tuition, per diem, and travel in accordance with the Joint Travel Regulations) for those employees currently working on site. If an employee who has received Government-provided training as described above should vacate his/her position for any reason, the contractor shall provide certified personnel to complete the requirements of this contract at no additional cost to the Government.” (emphasis added).

The contract has had numerous modifications over the years. The pertinent language from the contract, in effect during the Avaya training, and set forth again in Modification 14, effective 1 November 2013, states that DoD civilians will be responsible for the telephone switching equipment:

C.2.3.4.1 The contractor shall maintain, install, de-install, move or remove (as identified on the appropriate service form) all cable -- to include copper, coaxial, CAT5 or CAT6 and fiber optic cable -- associated with the Administrative Telephone System. This includes all connectors, terminations, and ducts from point of demarcation to the installation point for the required service. Government Department of Defense civilians will be responsible for the telephone switching equipment but the contractor shall be responsible for the O & M of customer requirements from the switch through to the customers end item (phone or other applicable device) location. The cable requirements are in Attachment 1, paragraph 4, of this PWS.

On September 30, 2013, via an email, Mr. [NEC Director] directed Ms. [Administrative Assistant] to reserve training positions for Mr. [GC&E Employee #1] (GC&E employee), Mr. [GC&E Employee #3] (GC&E employee), Mr. [GC&E Employee #2] (GC&E employee), and Mr. [Network Specialist #3] (DAC) on the training roster for the government funded Avaya Voice System training known as CM6 Bootcamp that was to be held during the week of September 30, 2013-October 4, 2013. A total of 4 DACs and 3 GC&E employees were trained on the Avaya Voice System.

With respect to this Avaya Training and other training that contractor employees were sent to attend, Mr. [System Administrator] sent an email to the IO, dated March 13, 2014, stating that he believed any such training was “illegal because contractors are supposed to have such training and certification before they were put into that position.” Further, Mr. [System Administrator] provided additional testimony with respect to the Avaya Training when he testified that certain actions taken by Mr. [NEC Director] were illustrative of:

“fraud, waste and abuse actions taking place at the Network Enterprise Center (NEC), Fort Buchanan, Puerto Rico. The list is not inclusive and involves Defense Contractors actions and NEC’s Director Decisions. The list was compiled using the following as references: the Standards of Ethical Conduct for Employees of the Executive Branch, the Joint Ethics Regulation and the Federal Acquisitions Regulations. Providing training to contractors. The government may provide training to contractor personnel if required by the contract and it doesn’t create an appearance that the government is favoring one contractor over another. Avaya Voice Training provided from September 30-October 4, 2013 to contractors – [GC&E Employee #1], [GC&E Employee #3] and [GC&E Employee #2] – whose functions are not required by the contract and not related to the training content. Who paid for the training, the government or the contractor?”

Additionally, Mr. [Chief, IT Support], testified that generally, Mr. [NEC Director] showed preferential treatment for contractor employees to receive training, sometimes resulting in replacing training spaces allocated for DACs to contractor employees so the contractor employees could be trained instead of the DACs. He attested to the following:

“During a running training provided by Black Box under the I3MP project, he showed up at Bldg 511 and removed the people assigned to take training and accommodated the ones he selected. From there, it was also obvious his preference over Mr. [GC&E Employee #1], who participated in a lot of training where none was related to his functions. In addition, he was the one that selected the personnel to take the rest of remaining training...In several training [sessions] personnel that required [certain] training because it...related to [their work] as DAC employees were removed from that training and spaces were then occupied by Contractors.”

The GC&E Site Manager, Mrs. [GC&E Site Lead] stated during her February 12, 2014 interview with the IO that any training provided to GC&E employees, including the Avaya training, was always relevant to the employees’ duties and within the scope of the contract.

Unfortunately, however, the IO, inexplicably, did not ask Mr. [NEC Director] specifically about the Avaya training during any of their multiple interview sessions, which was captured in both two written and sworn statements as well during an audio interview conducted on February 13, 2014. During Mr. [NEC Director]’s audio interview, Mr. [NEC Director] stated he tried to treat contractor staff and DAC staff equally and would split training up, about 50/50 between contractors and DACs, as it related to their individual duties. Without delving further into the issue of the propriety of Mr. [NEC Director]’s actions specifically with respect to the Avaya training, the IO made a finding that the Avaya training was not required because neither the contract nor the then pending modification to the contract required GC&E to maintain the telephone switch (an electrical device that routes a phone call to the proper line).

After the ROI had been completed and approved by the Approving Official, and during the drafting of this Report, the need to supplement the evidence gathered during the IO's investigation arose with respect to the merits of Allegation 2. For clarification purposes, the OGC requested that further evidence be gathered regarding what exactly is the "Avaya" Voice IT communication system and how the introduction of that new system to Fort Buchanan was affected by the taskings that were to be performed under the subject GC&E contract in place at the Fort Buchanan NEC. This was particularly necessary to obtain additional details on this matter besides the testimony from Ms. [GC&E Site Lead] wherein she asserted "that any training provided to GC&E employees, including the Avaya training, was always relevant to the employees' duties and within the scope of the contract" as well as the general statement provided by Mr. [NEC Director] that he would split training up, 50/50 between contractors and DACs, as it related to their individual duties.

To that end, on June 20, 2014, testimony was received from two NETCOM subject matter experts (SMEs) in an effort to determine whether the Avaya training was permitted under the terms of the contract: Mr. [G-3 Network and Engineering Branch Chief], G-3 Network and Engineering Branch Chief, 7<sup>th</sup> Signal Command, and his "voice infrastructure" expert, Mr. [G-3 Unified Capabilities Action Officer]. The significance of their testimony is staggering and dramatic, and in essence, altered the complete analysis of the subject allegation and the merits of Allegation 2. Mr. [G-3 Network and Engineering Branch Chief] testified to the following:

"I am the 7th Signal Command (Theater), G3 Network and Engineering Branch Chief for the Continental United States (CONUS) Theater. My engineering responsibilities include but are not limited to VoIP, VoSIP, Long Haul Circuits, TDM telephone switches, Network Modernization CONUS, Multiprotocol Labeled Switching and any other engineering requirements for the CONUS Theater. In 2013-2014 the Program Manager (PM) for Installation Information Infrastructure Modernization (I3MP) fielded an Internet Protocol (IP) based voice system to Fort Buchanan. This Voice over Internet Protocol (VoIP) Local Session Controller (LSC) is the first of its kind in the Army CONUS Theater. The old voice switch was analog and required someone to locally manage the device. The VoIP LSC is more of a computer server. The phones that operate with this LSC are IP based and run off of Category 5/6 cables unlike the old PBX which ran off of copper cables. This technology will change the way the Army operates and maintains voice services infrastructure as IP technology allows for remote management by voice and network experts whereas legacy technology must be managed locally by voice experts.

The PM was required to provide New Equipment Training (NET) to support the Avaya VoIP LSC at Ft. Buchanan because it was new technology. This new technology will be supported by the LAN administrator, Network Engineers, desktop administrators, inside and outside plant personnel. As such they all should receive NET training on the Avaya LSC."

Mr. [G-3 Unified Capabilities Action Officer] testified to the following:

“I am the Unified Capabilities Action Officer for the CONUS Theater including operations for Voice infrastructure. The Program Manager (PM) for Installation Information Infrastructure Modernization (I3MP) fielded an Internet Protocol (IP) based voice system to Fort Buchanan in 2013-2014, which is the first of its kind in the Army CONUS Theater. This technology will change the way the Army operates and maintains voice services infrastructure as IP technology allows for remote management by voice and network experts whereas legacy technology must be managed locally by voice experts. The PM is responsible for providing New Equipment Training (NET) for this new technology. Voice switch administrators, network administrators, network engineers, and voice services touch labor support require would all require this training. The 7th SC(T) requested that the 2nd Regional Cyber Center (RCC) receive this training as well, however, PM funded training slots were limited so ultimately the decision resided with the local Network Enterprise Center Director to determine which of the local administrators received the training in order to best support the local O&M mission for voice services.”

Consequently, based on the overwhelming importance of the testimony provided by Mr. [G-3 Network and Engineering Branch Chief] and Mr. [G-3 Unified Capabilities Action Officer], it is clear that providing the subject Avaya training to the servicing GC&E contractor employees was both necessary and critical to their ability to meet the requirements imposed on GC&E by the subject contract with the NEC for providing the necessary services to the Fort Buchanan location. The Avaya system, a new technology, was fielded by the Army's I3MP office. I3MP funded both the Avaya system and the Avaya training. They explained in detail that the old phone system was “an analog system” that ran through copper wires. The new Avaya system is a voice over internet protocol (VoIP) system that runs through the computer network. Because VoIP is running through the network and is a completely different type of system, it is imperative that those responsible for the VoIP system receive new equipment training. This would include LAN administrators, network engineers, desktop administrators, and the inside/outside plant personnel. They concluded that due to the limited number of training positions it was up to the NEC Director to prioritize who would be trained first.

### *Discussion of Allegation 2*

The first question to be answered is whether contractor personnel could be provided Avaya training, at government expense, under the terms of the contract. The IO determined it was improper because the contract states that DACs will maintain the telephone switch and GC&E “shall be responsible for the O & M of customer requirements from the switch through to the customers end item (phone or other applicable device) location.” The IO's is an incorrect finding as explained above and as is further addressed below.

While the Avaya switch will be maintained by DACs, the Avaya VoIP is an entirely different type of technology that impacts many different sections within the NEC. In simple terms, the old copper-wire system was a mechanical system - the phone signal arrived at the switch, the switch would route the signal to the proper line, and the signal was then carried from the switch to the phone. If a switch was updated or replaced with a different model, it had no

effect on the person who ensured a signal arrived from the phone company line or on the person who maintained the line between the switch and the phone.

A VoIP system, on the other hand, is routed through the computer network so the LAN administrators and network engineers must understand the VoIP system to ensure the myriad parts of the network system are all able to “talk” to one another. Even the person installing a VoIP phone requires some level of training because the phones must be programmed rather than merely plugged into a phone jack. The increase in complexity is similar to transitioning from a dial-up internet modem to today’s home internet systems with modems, wireless routers, and multiple internet and Bluetooth capable devices.

The 7<sup>th</sup> Signal Command (Theater)’s SMEs were emphatic that LAN administrators, network engineers, inside/outside plant technicians, etc. are required to be trained on the Avaya VoIP system. There is no logical reason why it should matter if those personnel are DACs or contractors.

The contract expressly states the Army will provide training required for new equipment to the contractor’s existing personnel. The Avaya system was “new equipment” and Mr. [NEC Director], Ms. [GC&E Site Lead], and the 7<sup>th</sup> Signal Command (Theater) SMEs agree that Avaya training was required for the contractor personnel who received it ([GC&E Employee #3] [NEC Director] – LAN administrator; [GC&E Employee #2] – network engineer; and, [GC&E Employee #1] – inside/outside plant technician at time of training and currently a network engineer assistant).

**Conclusion. Army Findings as to Allegation 2:**

This allegation is NOT SUBSTANTIATED. The contract provides for government funded training of contractors for new equipment and the contractor personnel who were trained had a valid requirement for the training.

**OSC REFERRED ALLEGATION 3: Mr. [NEC Director] improperly promoted Mr. [GC&E Employee #1] and Mr. [GC&E Employee #2] to Network Engineer contract positions without the guidance of the Contracting Officer, the Contracting Officer’s Representative (Mr. [COR]), or the GC&E Contract Site Manager (Ms. [GC&E Site Lead]).**

**OSC REFERRED ALLEGATION 4: Mr. [GC&E Employee #1] and Mr. [GC&E Employee #2] were promoted without the required experience, training, and certifications for their positions.**

*Summary of the Evidence Pertaining to Allegations 3 & 4*

In late June/early July 2013, during a regular, weekly meeting with technical personnel, Mr. [NEC Director] asked two contractors who were present, Mr. [GC&E Employee #2] (GC&E) and Mr. [GC&E Employee #4] (GC&E), if they had considered applying for a vacant contract Network Engineer position. Mr. [Chief, Information Assurance][Chief, Information Assurance], Chief, Information Assurance Division, NEC also testified that he was at this meeting.<sup>23</sup>

On July 24, 2013, the NEC's administrative assistant, Ms. [Administrative Assistant] , sent out an email to numerous individuals announcing Mr. [GC&E Employee #2]'s selection which provided the following announcement:

“On behalf of Mr. [NEC Director], NEC Director and Ms. [GC&E Site Lead], GS&E Site Manager

The NEC want to congratulate Mr. [GC&E Employee #2] for his promotion as the Network Engineering for the NEC.

Mr. [GC&E Employee #2] will be starting his new assignment as the NEC Network Engineering the next Thursday, July 25 2013 and will be working side by side with Mr. [Information Security Specialist #1] during the following schedules: Monday to Friday from 0700 to 1600.

Congratulations once again to Mr. [GC&E Employee #2].  
V/r

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<sup>23</sup> It is noted that Mr. [Chief, Information Assurance] provided extensive detailed oral and written testimony in both a 35-page written statement as well as testimony recorded in a four hour long audio interview recording conducted on February 12, 13, and 14, 2014, and several “clarifying” emails including one dated February 27, 2014. The subject areas covered by his testimony are numerous and include such areas as: misuse of a government credit card to purchase a gazebo for an outside break area; concerns with “declining” morale within the NEC organization; disagreements with operational and personnel changes within the NEC; Mr. [NEC Director] allegedly attending the December 2013 GC&E Christmas party and presenting two GC&E contractor employees, Mr. [GC&E Employee #1] and Ms. [GC&E Employee #5], with “the equivalent of cash awards” which resulted in “many DA civilian and contract personnel present were left with a feeling of discomfort at having witnessed the situation.”; numerous other examples of “favoritism” between Mr. [NEC Director] and contractor employees; as well as many other issues and concerns, some of which were also the subject of most of the allegations that OSC referred to the Army for investigation. However, for purposes of this Report, the Army’s narrative Report has primarily focused on addressing only the eight allegations that OSC referred to the Army. Other witness also brought up additional matters that are beyond the scope of this Report. Their testimony is not as detailed as Mr. [Chief, Information Assurance]’s.

Ms. [Administrative Assistant] ”

Mr. -[COR]<sup>24</sup>, Contracting Officer Representative, NEC, in an email dated August 22, 2013, submitted a modification to the Performance Work Statement to the installation contracting office.<sup>25</sup> This modification included the addition of a new position – Engineering Assistant, however, the modification did not identify any individual for the position, only the requirements for the new position. This email captured 18 different changes to the Performance Work Statement dated August 22, 2013, including the subject matter, by stating “4. Add to Index C.2.13 Engineer Assistant (New position).”

Additional testimony relevant to the creation and filling of the subject Engineering Assistant position was provided by Mr. [Chief, Information Assurance][Chief, Information Assurance] in his February 12, 2014 statement. He testified that in September 2013, Mr. [NEC Director] announced during a meeting that he was considering the creation of a network engineering assistant position, that he believed Mr. [GC&E Employee #1] (GC&E) was an excellent employee, and that the job would be a good professional development opportunity for Mr. [GC&E Employee #1]. The contracting officer’s representative (COR), Mr. -[COR], and Ms. [GC&E Site Lead], the GC&E site lead, were also present. Mr. [Chief, Information Assurance] stated that he attempted to dissuade Mr. [NEC Director] from this plan because of a concern of perceived favoritism, that Mr. [GC&E Employee #1] was not qualified, and that it is the contractor’s responsibility to decide who will fill a contractor employee position. Further, Mr. [Chief, Information Assurance] also testified that during a NEC staff meeting in September 2013, Mr. [NEC Director] announced Mr. [GC&E Employee #1] had been selected for the engineering assistant position. However, according to Mr. [Chief, Information Assurance], the contract modification to create this position was initiated after the announcement.<sup>26</sup>

The contract modification creating the new position was signed by the Contracting Officer on January 14, 2014 with an effective date of November 1, 2013, as reflected in Contract Modification 14. In addition to the creation of this new position of engineering assistant, the new contract removed two information assurance positions, and one part-time webmaster position. However, with respect to the Engineering position in question, Contract Modification 14 provides for the following requirements:

C.2.4.1 Engineering. The contractor shall provide technically qualified individual to support and oversee LAN systems engineering and upgrade, as well as systemic and infrastructure additions, moves or changes. The contractor shall have a minimum of five years experience on networks, Cisco equipment and

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<sup>24</sup> Mr. [COR] is also referred to as “Mr. [COR].”

<sup>25</sup> It should be noted that it is not customary to identify the individual by name in a contract modification, only that a position has been added. Thus, the promotion of Mr. [GC&E employee #2] was not memorialized in the modification.

<sup>26</sup> According to Mr. [Chief, Information Assurance]’s statement of February 12, 2014, it was only following the public announcement of Mr. [GC&E Employee #1]’s appointment that Mr. [COR], began the process of modifying the existing contract to include the new position for Mr. [GC&E Employee #1]. However, Mr. [Chief, Information Assurance]’s assertion is contrary to the documentary evidence reflected in Mr. [COR]’s email dated August 22, 2013.

systems under windows platform (windows server 2008, 2003, Vista and XP), Sonet Ring and UNIX. . . . Note: This position is designated IT Level I and under the IA training requirements IAW BBP/DoD 8570.01M (IASAE II) The contractor shall certify the person at this position as IT Level I during the first 6 months of the contract commencement.

C.2.13.1 Engineering Assistant. The contractor shall provide technically qualified individual to assist the Network Engineer on LAN systems engineering functions and upgrade, as well as systemic and infrastructure additions, moves or changes. The contractor shall have a minimum of five years experience on networks, Cisco equipment and systems under windows platform (windows server 2008, 2003, Vista and XP), Sonet Ring and UNIX. . . . Note: This position is designated IT Level I and under the IA training requirements IAW BBP/DoD 8570.01M (IASAE II) The contractor shall certify the person at this position as IT Level I during the first 6 months of the contract commencement.

The IO gathered additional testimony from other NEC employee witnesses relative to the establishment and filling of the subject position; some witnesses testifying that Mr. [NEC Director] did discuss issues with his staff, the COR, and the GC&E site lead while other testimonial evidence reflecting that Mr. [NEC Director] undertook seemingly unilateral actions without consulting with those individuals; as well as the need to have qualified contractor employees to perform the required tasks. Further, the testimony does reflect that, to some degree, Mr. [NEC Director] did seek, at times, input from his subordinates and their supervisors as well as NEC contract *and* contractor officials. The following is representative of the testimony received on these matters by the IO.

On February 27, 2014, Mr. [Chief, IT Support] averred the following:

“Over the past months NEC Director has been conducting a series of changes in both the government side and the Contractor. I should mention that at the Contractor side, for my understanding, the Director has been directly influencing the operations of the contract, over the COR, which is Mr. . . . Important to mention is the designation of Mr. [GC&E Employee #1] as a System Engineer Assistance, a position which was not approved in the contract until recently. Personally I did not agree with the designation, which I reported to the Director, telling it not possess the experience and knowledge to pursue that position. Additionally, I have seen Mr. [GC&E Employee #1] stay with the Director repeatedly after business hours at the Director office. This is part of why other contractors see Mr. [GC&E Employee #1] as the favorite employee from the NEC Director.”

On the other hand, on February 11, 2014, Mr. -[COR], as the COR, testified that:

“During a staff meeting, Mr. [NEC Director] has mentioned and requested our input into what is the best way to use our resources within our DAC and Contractors work force. In the past, all Division Chiefs have provided

recommendations in order to improve ways to accomplish our mission. Recently, this has become a problem with many employees. Contractor's reassignments: On some occasions, GC&E has moved contractors temporarily, in order to cover or improve the functions that they cover under the contract W91RUS08D0004. Our Technical Aid has been moved to cover or assist the outside plant section, and one of the Systems Administrators was also sent to assist the Network Engineering due to the new Telephone Switch requirements."

Similarly, in his statement dated February 11, 2014, Mr. [Network Specialist #3] testified to the following:

"Regarding the movement of contractor and civilian employees around; Mr. [GC&E Employee #1] was moved from his position as an outside/inside plant technician to that of his present duties working with Mr. [GC&E Employee #2] as data switch technicians. Mr. [GC&E Employee #2] was also moved from the LAN administration section to take up the position of Network Engineer after the incumbent took a civilian position in Information Assurance. The Network Engineer position is a contracted position. He has shifted people around in what I assumed was for the purpose of load balancing the work force and performing cross training. The only question that pops my mind is why he would not allow employees with seniority be given first choice over more junior employees. But again, I don't know all the details or motives why he would make these changes."

On February 21, 2014, witness [Chief, Business and Plans] testified as to what he thought about Mr. [NEC Director] generated actions with respect to personnel movements for contractor positions rather than more appropriately, Mr. [NEC Director] relying on the contracting officer to perform certain functions in accordance with his responsibilities. To that point, Mr. [Chief, Business and Plans] testified as follows:

"Meeting with Mr. [NEC Director], Mr. [COR], Mr. [Chief, IT Support], Mr. [Chief, Information Assurance] and Myself (Friday 0830). In meeting, Mr. [NEC Director] said that he had spoken to Mr. [name redacted] (GC&E) and that he assured Mr. [NEC Director] he would give the government 6 Inside/outside plant workers. I expressed to him that it is not correct to go directly to GC&E to request the number of contractors require for that functions or tasks. I reminded him and Mr. [COR] once more that is the KO responsibility to negotiate with contractor on behalf of the government. In order to perform these functions I explained to him and Mr. [COR] that what we as the government need is to provide a Statement of Work where we stipulate the requirements and the workload data to the KO, the KO will request and negotiate with GC&E and at that time the vendor will provide us with the proposal to performer the tasks and the number of personnel they require to complete these requirements."

One witness, Mr. [Information Security Specialist #1], testified on February 12, 2013, regarding Mr. [NEC Director]'s actions and decisions that resulted in contractor employee movements, by sharing the following detailed testimony with the IO:

“I am writing to express my concerns and denounce several actions taken by the NEC director Mr. [NEC Director] which put in peril our network security and create a hostile working environment in our organization:

I. Mr. [NEC Director] went out of his way as a federal employee and told GC&E management that he wanted two current contractor employees assigned to other positions, as the new network engineer and network engineer assistant. The first appointment was for Mr. [GC&E Employee #2] on July 2013 and the second appointment was for Mr. [GC&E Employee #1] on December 2013.

II. Mr. [NEC Director] order me to give IT Network training to those contractors that he chose using government time and resources.

III. Mr. [NEC Director] asked my supervisor Mr. [Chief, Information Assurance] to order me to give Mr. [GC&E employee #1] the administrator password on our production network to perform tests for Voice Over IP telephones.

1. I have worked for over 8 years with Mr. [GC&E Employee #2] and Mr. [GC&E Employee #1] and I am aware that neither have the networking knowledge nor experience to perform the tasks of a network engineer. None of them have the networking certifications required and most important they do not have the security certifications required to ensure our network is secured.

2. An assistant network engineer position was an invention of Mr. [NEC Director] so Mr. [GC&E Employee #1] could avoid the certification requirements. Mr. [GC&E Employee #1] lack of professional experience, technical knowledge and poor English language proficiency will make it very difficult for him to obtain the required certifications. This is a futile way to try to deceive the system because regulation and our nation’s security does not care for position names.

4. In order to manage network environments the person must have a Level II certification provided only by DoD. Mr. [GC&E Employee #1] has never attended the course required for this certification.

5. Unqualified personnel with privileged access to government networks pose an insider threat to our national security. The Federal Information Security Management Act requires annual reporting on training and certification of the Information Assurance (IA) workforce. Network engineers fall under IA workforce because of their inherent IA related duties. This is defined on the DOD Directive 8570.01.

6. I have personally explained this to Mr. [NEC Director] (NEC director) on two meetings, but he does not care about regulation and security, all he seems to care about is on favoring these two employees.

7. Having uncertified personnel working as network engineers is a violation of Information Assurance security controls. Since we are working currently on our network Certification and Accreditation Process, creating this violation sets our IA department for failure on this effort. This is a serious issue because FISMA requires that certification status is reported annually and our accreditation may be revoked, resulting on a disconnection from the DISA network.”

Based on the totality of the testimonial and documentary evidence received by the IO, and based on his professional expertise as an experienced GS-15 IT professional, the IO found the following:

“FINDING: The Training and Certifications required for the position is a Certified Information System Security Professional (CISSP) that is to be completed within six months of being assigned to the position. Neither Mr. [GC&E Employee #2] or Mr. [GC&E Employee #1] are currently certified and the documentation shown by the contractor on the status of the training and certification for Mr. [GC&E Employee #2] and Mr. [GC&E Employee #1] show them both assigned to the positions on 1 Nov of 2013, and a Certification required date of 1 May of 2014. (Statements: [Chief, Information Assurance] / Tab 8, [Information Security Specialist #1] / Tab 13). Mr. [GC&E Employee #2] was placed in the Network Engineer position on 24 July 2013, as stated by the statements of Mr. [System Administrator] and Mr. [Chief, Information Assurance] which included the email announcing the assignment. Mr. [GC&E Employee #2] has been in the position for more than six (6) months and is not certified, he does not have the certification required for the position...neither Mr. [GC&E Employee #2] nor Mr. [GC&E Employee #1] have the required experience to satisfy the contract requirements of five (5) years of experience on networks.”

#### *Discussion of Allegations 3 & 4*

The allegation that Mr. [NEC Director] improperly promoted two contractor employees without the input of the contracting officer, COR, and the site manager implies that Mr. [NEC Director] *actually* promoted them. However, contrary to that perception, the employer (GC&E) is the only authorized entity that can promote a contractor's employees. The evidence does, however, indicate Mr. [NEC Director] makes his preferences known to GC&E and the contractor complies. The evidence shows that Mr. [NEC Director] discussed contractor employee assignments with the contractor site lead and that the COR was involved. The contracting officer signed/approved the contract modification that created the new contractor position.

The witness statements make it very clear that Mr. [NEC Director] has an authoritarian leadership style and the NEC staff feels undervalued and ignored. This also leads to a lack of communication and resulting misperceptions. For example, Mr. [Chief, Information Assurance] claimed that Mr. [NEC Director] announced the selection of Mr. [GC&E Employee #1] as the new engineering assistant in September 2013 and this was done before the paperwork had been submitted to create the position. The facts, however, show the requested change had been submitted to the Contracting Officer on August 22, 2013.

While some employees noted that Mr. [NEC Director] sought input on the best way to manage the work force, that GC&E moved its personnel, and that re-assignments were done for balancing of the workload and cross training, Mr. [NEC Director]'s actions have created a very strong perception of favoritism for certain contractor employees. These actions include encouraging Mr. [GC&E Employee #2] to apply for a position, creating a new position, and

allowing the contractor to fill these positions with people who do not have the requisite qualifications.

The findings of the investigating officer clearly show that neither contractor employee [GC&E Employee #1] or [GC&E Employee #2] had the requisite training and experience for their positions and one of them was not certified within the required six month period.

Though Mr. [NEC Director] did not break any laws, however, it is clear that his management style has severely impacted the morale of the unit. Moreover, it is reasonable to assert that he possibly jeopardized the NEC mission by allowing unqualified personnel to fill the two engineering positions.

### **CONCLUSION. Army Findings as to Allegations 3 & 4:**

With respect to Allegation 3 that Mr. [NEC Director] promoted contractor employees without consulting with the contracting officer, COR, and contractor, this Allegation is UNSUBSTANTIATED.

However, with respect to Allegation 4 that contractor positions were filled with personnel who did not have the required experience, training, and certification for their positions, this Allegation is SUBSTANTIATED.

**OSC REFERRED ALLEGATION 5: Contract employees regularly engage in inherently governmental functions, such as attending meetings for federal employees and conducting training for top management.**

#### *Summary of the Evidence Pertaining to Allegation 5*

Mr. [System Administrator] provided a very detailed account of what he considered to be inappropriate actions taken by Mr. [NEC Director] with respect to contractor employees performing what *he* characterized to be inherently governmental functions at NEC. In his statement provided on February 10, 2014, he attested to the following events:

“This is a list of fraud, waste and abuse actions taking place at the Network Enterprise Center (NEC), Fort Buchanan, Puerto Rico....Having contractors brief top management on administrative/technical procedures. [GC&E Employee #1] did a presentation on CAPRs and Work Ticket processes to GS 13 and above on what he considered was the proper procedures without any kind of experience or expertise in the area. [GC&E Employee #1] introduced himself as the SME on these matters. Mr. [GC&E Employee #3] [NEC Director], contractor, is scheduled to brief government employees on Project Manager without any kind of experience or expertise in the area; and most important, without an certification as project manager. [GC&E Employee #3] [NEC Director] position is LAN administrator NOT in management position as project manager. Mr. [NEC Director] invites Contractors to participate in GS meetings where issues

pertaining only to government employees are discussed. Mr. [NEC Director] also asks Contractors for their feedback or input in management decisions that only pertain to government employees giving the perception that they have the same rights and privileges of other GS or government employees.... Having contractors perform GS duties Operator, [name redacted] (the Contract Site Manager' sister), performs duties of an Administrative Assistant – answering the phones, writing e-mails, and taking minutes at GS employees' meeting held on September 6, 2013. When the Admin Assistant is on leave, the Contractor/Operator takes the GS place performing her duties....Contractors performing GS function during shutdown furlough Segundo COR who is contracted as tech Controller at the Network Enterprise Center, Operations Center, Bldg.376, was directed by Mr. [NEC Director], NEC Director, to perform the duties of information Technology (IT) Specialist at the Help Desk from 2 October until the furlough ends. Other contractors with functions at the Operations Center were transferred to Help Desk Functions visiting customers around the military installations. They are: [two names redacted]

### *Discussion of Allegation 5*

Subpart 7.5 of the Federal Acquisition Regulation (FAR) sets forth “policies and procedures to ensure that inherently governmental functions are not performed by contractors” for service contracts. As guidance and for illustrative purposes, FAR §§ 7.503(c) and (d) give examples of functions that are and are not considered “inherently governmental functions:”

“(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

- (1) The direct conduct of criminal investigations.
- (2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.
- (3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.
- (4) The conduct of foreign relations and the determination of foreign policy.
- (5) The determination of agency policy, such as determining the content and application of regulations, among other things.
- (6) The determination of Federal program priorities for budget requests.
- (7) The direction and control of Federal employees.
- (8) The direction and control of intelligence and counter-intelligence operations.
- (9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
- (10) The approval of position descriptions and performance standards for Federal employees.
- (11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of

property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts --

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including --

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

- (1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
- (2) Services that involve or relate to reorganization and planning activities.
- (3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
- (4) Services that involve or relate to the development of regulations.
- (5) Services that involve or relate to the evaluation of another contractor's performance.
- (6) Services in support of acquisition planning.
- (7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
- (8) Contractors providing technical evaluation of contract proposals.
- (9) Contractors providing assistance in the development of statements of work.
- (10) Contractors providing support in preparing responses to Freedom of Information Act requests.
- (11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).
- (12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
- (13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.
- (14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
- (15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.
- (16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
- (17) Contractors providing inspection services.
- (18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.
- (19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details."

The evidence relevant to the subject allegation reflects that contractor employees attend meetings, conduct training, and brief top management on administrative and technical details. These types of activities are not similar to the examples given in the FAR as being inherently

governmental. FAR 7.503(d) lists the types of services that are generally not considered inherently governmental and gives examples including serving as a technical advisor to a source selection board, participating in reorganization and planning activities, and conducting agency training courses. The FAR cautions that how the services are conducted could cause some of these examples to approach being in the category of inherently governmental, however, there is no indication that the services provided by the contractor come close to approaching inherently governmental services.

**CONCLUSION. Army Findings as to Allegation 5:**

This allegation is UNSUBSTANTIATED. There is no evidence to support a finding that the contractor employees were performing inherently governmental tasks. Rather, the evidence reflects that the witness's recitation of the types of tasks being performed by the contractor are routine contractor support type tasks which include providing training, giving briefings, and attending meetings. It should be noted that the mere attendance at a meeting, is not illustrative of performing inherently governmental tasks.

**OSC REFERRED ALLEGATION 6: Mr. [NEC Director] directed contract employees to work on projects outside the scope of their contract, such as construction of a gazebo on government property.**

*Summary of the Evidence Pertaining to Allegation 6*

There are several examples cited by witnesses that reflect Mr. [NEC Director] directing contract employees to work on projects outside the scope of their contract, though the Site Manager, Ms. [GC&E Site Lead] testified that Mr. [NEC Director] did not discuss any matters with her regarding performing work that was outside of the contract's scope. Further, she stated to the IO that there were no conversations about new work that is not currently within the scope of the GC&E contract.

Other testimonial evidence gathered during the investigation indicates the following circumstances reflect that Mr. [NEC Director] directed contract employees to work on projects outside the scope of their contract. For example, Mr. [Chief, Information Assurance] testified in his February 10 and 12, 2014 statements that due to a manning shortfall in the warehouse, Mr. [NEC Director] temporarily transferred his administrative assistant to the warehouse to assist at that site, and that Mr. [NEC Director] had a contractor employee temporarily fill the administrative assistant position duties. Upon review of the GC&E contract terms, none of those contract terms provide for the contractor to fulfill the duties of an administrative assistant.

Further, another witness, Mr. [Chief, Business and Plans], stated in his February 21, 2014 statement that on the morning of August 8, 2013, Mr. [NEC Director] told him that he had received from Mr. [AST Director] AST Director, the AST 3 Director, approval to purchase two gazebos for buildings 527/376., and that later on that morning, Mr. [NEC Director] told him that he was "planning to go with Mr. [GC&E Employee #1], (His favorite contractor) to Home Depot in the afternoon to buy the gazebos" and that they were going to see the gazebos and ask for a cost estimates so they could advise Mr. [AST Director] about the total costs for the gazebo

materials. Also, Mr. [Network Specialist #3] averred in his February 11, 2014 statement that “I understand through word of mouth that he (Mr. [GC&E Employee #1]) was supposedly involved in assisting Mr. [NEC Director] with building materials for a gazebo for building 527 during non-duty hours. Truth be known, Mr. [NEC Director] had requested volunteers during his first town hall meeting to help build the gazebo to expedite its construction and drive down the labor cost.” Another witness, Mr. [System Administrator], in his February 10, 2014 statement, testified that Mr. [GC&E Employee #1] was not on duty during the shopping trip and that “[o]n August 14, 2013, contractor [GC&E Employee #1] submitted Sick Leave to cover the time used to shop for construction materials with NEC Director, Mr. [NEC Director], at Home Depot from noon until 2100 hours.” Again, the GC&E contract does not provide for the contractor to fulfill these types of duty.

### *Discussion of Allegation 6*

A contractor is hired to perform specific functions. A number of issues arise if the contractor is directed or asked to perform other functions. These issues include restrictions on personal service contracts, tasks outside the “scope of work,” under or overpaying the contractor, and possibly violating the prohibition on accepting voluntary services.

There is insufficient evidence to warrant a finding that Mr. [NEC Director] *directed* any contractor employees to work on the gazebo or any other project. However, the evidence does reflect that Mr. [NEC Director] asked for volunteers to assist with the gazebo and Mr. [GC&E Employee #1] accompanied him, in a non-duty status, to Home Depot.

31 U.S. Code § 1342 provides, in part, “An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.” Mr. [NEC Director] possibly violated this law by allowing Mr. [GC&E Employee #1] to volunteer to assist in the trip to Home Depot.

There are two readily apparent dangers with allowing contractor employees to “volunteer” their services, regardless of whether the volunteerism was actively solicited or tacitly condoned. The first issue is the volunteer can seek payment after the services are provided. The second issue is one of perceptions. The contractor, competitors, employees, or even the public at large, can view “volunteerism” as a required quid pro quo to obtain or keep a contract or, as in this case, that Mr. [NEC Director] favored certain GC&E employees and, in return, the contractor and employees “volunteered” to help and did not object to duties outside of the scope of their work.

Assigning a contractor employee to temporarily work as an administrative assistant is more troubling. Only the contracting officer, acting within his or her authority can issue a contract change. FAR § 43.102(a). This rule prohibits other government personnel from executing a contract change, acting in such a manner as to cause the contractor to believe they have authority to bind the government, or directing or encouraging the contractor to perform

work that should be the subject of a contract modification. Any contract change not made by the contracting officer is unauthorized.

An additional FAR provision comes into play here, specifically the restrictions for entering into a personal services contract. FAR Part 37.104 sets forth the rule generally prohibiting personal services contracts:

37.104 -- Personal Services Contracts.

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (*e.g.*, 5 U.S.C. 3109) to do so.

(c)

(1) An employer-employee relationship under a service contract occurs when, as a result of

(i) the contract's terms or

(ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to --

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

A contractor can be hired to perform the duties of an administrative assistant without violating the prohibition on personal services contracts. In this case, Mr. [NEC Director] created the *perception* of a personal services contract by arranging for a contractor employee to perform work outside the scope of the contract.

Further, it should be noted that a contractor and or a competitor contractor can file a claim against the government when tasks are assigned, officially or unofficially, that are outside the scope of the contract. For example, if a custodial contractor's employees are tasked to paint the building in addition to cleaning the building, several potential claims arise. The custodial contractor will likely seek more money; a local painting company could file a protest with the Government Accountability Office or in the Court of Federal Claims alleging that the government denied it the opportunity to bid on the contract; and, the contractor would be able to claim higher wages, overhead, and other costs for performing the additional work.

Yet another risk of having contractor employees perform work outside the scope of the contract is overpayment. One such example is paying an electrical engineer to perform less specialized tasks such as custodial services.

#### **CONCLUSION. Army Findings as to Allegation 6:**

This allegation is SUBSTANTIATED. Mr. [NEC Director] improperly utilized volunteer labor, improperly exerted control over the duty assignment of a contractor employee, and improperly tasked the contractor employees to perform work beyond the scope of their contract.

**OSC REFERRED ALLEGATION 7: Materials for the gazebo building were purchased on a Government Purchase Card at Home Depot, but were later returned to the store and logged by the responsible Parties as "furniture."**

#### *Summary of the Evidence Pertaining to Allegation 7*

Allegation 7 does not allege an apparent violation of any law or regulation in that there is nothing inherently improper with purchasing supplies at a commercial store with the Government Purchase Card (GPC); returning those purchases; or categorizing a gazebo, or the materials to build one, as furniture. However, the discussion that follows focuses on the facts and circumstances surrounding the use of the Government Purchase Card (GPC) to buy materials to construct a gazebo at Fort Buchanan from the local Home Depot store and the return of those items to the Home Depot.

The GPC is similar to a consumer debit card. It is used for minor purchases, usually under \$3,000, and it streamlines payment procedures and reduces the administrative burden associated with purchasing supplies and services. The GPC provides “on the spot” purchasing, receiving, and payment authority for individuals other than contracting or purchasing officers. Only designated “card-holders,” such as a unit supply clerk, are permitted to use the GPC but the card-holders can use the GPC for authorized unit purchases. Card-holders, approving officials, finance personnel, etc., are required to take certain training courses regarding the use and processing of GPC purchases.

There are various regulations that pertain to the use of the GPC, purchase of supplies, approval levels, accounting, etc. as well as command/unit internal policies and procedures. During the relevant time period, the brigade required NECs to obtain higher-level approval to make purchases for non-essential purchases because of the tight budget constraints placed on the Army’s spending levels that were being adversely affected by sequestration and furlough related matters.

The process for requesting and gaining approval for GPC purchases of the represented by the gazebo involves the following steps: Normally, the following is the process for requesting and gaining approval for GPC purchases: a need is identified; the GPC cardholder makes the purchase; the budget staff at the unit and the brigade “S-8” (Resource Manager) reconcile the books. However, when there is a purchase contemplated which might be considered to something a bit out of the ordinary such as an unusual purchase (such as bottled water) or a tight budget situation, that usually triggers the need to increase the number of players to at least know about the purchase if not approve it, thus, complicating a relatively quick and streamline process for making low dollar value purchases. Thus, as is reflected by the preponderance of the evidence, the appropriate steps that were needed to ultimately purchase the gazebo materials were undertaken, given the “unusual” nature of the purchase (not office supplies or a small appliance) and the tight fiscal times that were experienced throughout the DoD and the Army during 2013.

Mr. [System Administrator] testified on February 10, 2014 that contractor employees were expected to “volunteer” to do construction work regarding the gazebo and that Mr. [NEC Director] was accompanied by contractor employee [GC&E Employee #1] to Home Depot to purchase the gazebo materials. Also, Mr. [Chief, Information Assurance] testified on February 12, 2014 to the following:

“During April 2013, Mr. [NEC Director] stated his intention to try and procure a gazebo to serve as an outside break area for employees. Based on his stated intention, I provided Mr. [NEC Director] and Mr. [Chief, Business and Plans]

with an example of one costing less than \$1,300.00 at Costco. While I never received feedback on the submission, I later found during the summer of 2013 that a significant amount of lumber had been purchased as part of a project to obtain the materials to build the gazebo. Based on Mr. [NEC Director]'s comments, I understood that the gazebo was ultimately intended to be constructed by NEC DA Civilians and Contractors. The lumber sat outside of Building 527 for around a month or more....Although I never received further feedback or inquiry from Mr. [Hand Receipt Holder] or Mr. [NEC Director], the lumber was retrieved by Home Depot several weeks later. This is the only information of which I am aware regarding the potential misuse of the Government IMPAC. Mr. [Chief, Business and Plans], though, did brief me on several occasions that the project was ill-advised and that he had communicated such to Mr. [NEC Director] on multiple occasions prior to and following the Director's decision."

Mr. [Chief, Business and Plans] testified on February 21, 2014 to the following:

"Reference the use of IMPAC card to by construction material without proper authorization incurring on waste of money for the government. Sometime in April Mr. [NEC Director] came with the idea to provide to employees an area outside buildings 527/376 with a roof to the can smoke and can be use for others NEC activities also. I recommended to him to see if the brigade can authorize him to buy two pre fabricate gazebo (easy to assembly) like the one sale at the PX, Sears, Home Depot, SAMs or COSCO. Mr. [Chief, Information Assurance] shows me the pictures for a gazebo that he saw during the weekend at Home Depot and the price was around \$1,100.00. I send Mr. [Hand Receipt Holder] to go get more information to see if this item can met Mr. [NEC Director] expectations for the gazebo. ...In morning of 08 Aug 2013 Mr. came to me and talked me that he got Mr. [AST Director] (AST 3 Director) approval to purchase the two gazebos for buildings 527/376. Then around 11:00am Mr. [NEC Director] said to me that he was planning to go will Mr. [GC&E Employee #1] (His favor contractor) to Home Depot in afternoon to buy the gazebos... After I prepared the work plan for the next day and I went to see Mr. Gonzalez to discuss the work plan for Friday, and said to me that Mr. [GC&E Employee #1] have just requested the Friday off and asked why I was not notify on this, he said that talked Mr. [GC&E Employee #1] he need to get the approval from the site manager before can let me know about it. At that moment I got very offset with this situation I went and question the site manager why I was notify of this change... she said that contractor also can take leave.... [Mr [NEC Director]] left the three estimates in my desk with a note for Mr. [Hand Receipt Holder] to start the coordination to buy the gazebo material with GPC and instructed MR. [Hand Receipt Holder] to check with S-8 is funding available for these purchase. ...Then after purchase was executed and delivery Mr. Cain for the brigade called and asked him for the AST 3 director approval and Mr. [Hand Receipt Holder] talked him that he need to talk to Mr. [NEC Director] in reference to Mr. [AST Director] approval. After a couple of week went by and nobody was able provide or insure that Mr. [AST Director] approved this purchase. Mr.[106<sup>th</sup> staff member #2] called Mr. [Hand Receipt

Holder] asks him to see if he can return material back to the vendor, Mr. [Hand Receipt Holder] was able work with Home Depot Manager and he agreed to get the material back but the government will pay for transportation.”

Based on the preponderance of the evidence, both testimonial and documentary, that was gathered by the IO, including the above specific testimony detailed above, the following is a chronological breakdown of the facts and circumstances related to the subject gazebo building materials purchase:

April 2013 – Mr. [NEC Director] decides to install a gazebo as an outdoor break area for NEC employees. Mr. [NEC Director] testified on February 18, 2014 that in April 2013, he “[r]eceived verbal authorization from Mr. [AST Director] to purchase materials for Gazebo with the intent to construct project myself during personal time (weekend).” [TAB 5, Mr. [NEC Director], statement, February 18, 2014].

August 8, 2013 – Mr. [NEC Director] tells Mr. [Chief, Business and Plans] that the Area Support Team Director, Mr. [AST Director], has given approval for the NEC to purchase two gazebos and he is going to Home Depot to get estimates for Mr. [AST Director]. [as was reflected in Mr. [Chief, Business and Plans]’s statement of February 21, 2014; see also TAB 6, Mr. [NEC Director]’s statement of March 7, 2014].

August 14, 2013 – Mr. [NEC Director] obtains quotes from Home Depot. [Tab 7, Home Depot receipt/quote].

August 2013 – Mr. [NEC Director] gives the estimates to Mr. [Chief, Business and Plans] with a note for Mr. [Hand Receipt Holder], the NEC Administrative Specialist, to start the approval/coordination process to buy the gazebo material with the GPC and instructed Mr. [Hand Receipt Holder] to verify with the brigade S-8 (the higher headquarters finance division) that funding is available. Mr. [Hand Receipt Holder] submitted the purchase request for the lumber, and, subsequently, the brigade S-8 approved the purchase. [as was reflected in Mr. [Chief, Business and Plans]’s statement of February 21, 2014].

August 29, 2013 – Mr. [Hand Receipt Holder] submits purchase request. [Tab 8, Workflow System email, dated August 29, 2013].

August 29, 2013 – Ms. [106th Budget Analyst][106th Budget Analyst], 106<sup>th</sup> Signal Brigade, S-8 Budget Analyst, informs Mr. [Hand Receipt Holder] that “As of this time, purchases for furniture buys is not authorized. Did Mr. [NEC Director] approve this purchase?” [Tab 8, [106th Budget Analyst] email to [Hand Receipt Holder], dated August 29, 2013].

August 30, 2013 – The previous email is forwarded to Mr. [NEC Director]. Mr. [Hand Receipt Holder] then sends an email to Mr. [NEC Director], “Please disregard (the previous email), Ms. [106th Budget Analyst] “is referring to furniture purchase and we are not purchasing furniture” . . . Ms. [106th Budget Analyst] “also wanted to know if you had authorized this

purchase, the PR (purchase request) is already approved. All I have to do now is purchase the wood.” [Tab 8, [Hand Receipt Holder] email to [NEC Director], dated August 30, 2013].

September 3, 2013 – Mr. [Hand Receipt Holder] places an order for gazebo supplies with Home Depot in the amount of \$2,430.73. [TAB 9, Home Depot receipt]. Note, to the contrary, to this piece of evidence, however, Mr. [System Administrator] testified that Mr. [NEC Director] wrongfully used the GPC and made the purchase on the day Mr. [NEC Director] went to Home Depot with Mr. [GC&E Employee #1].

September 2013 - The lumber was delivered and several weeks later [106<sup>th</sup> Staff Member #2], the Resource Manager from the 106<sup>th</sup> Signal Brigade, called Mr. [Hand Receipt Holder] asking for proof of Mr. [AST Director]’s approval. The NEC did not have written confirmation and Mr. [106<sup>th</sup> Staff Member #2] directed the NEC to return the lumber to Home Depot. [Tab 10, email between Mr. [Hand Receipt Holder] and Mr. [NEC Director], dated September 27, 2013; see also Tab 5, [NEC Director] statement dated February 18, 2014, page 3; and as was also discussed in Mr. [Chief, Business and Plans]’s statement of February 21, 2014].

September 17, 2013 – Mr. [NEC Director] attempts to expedite the approval process for the gazebo by emailing Ms. [106<sup>th</sup> Budget Analyst] – “Attempted to reach you ref expediting the approval process to purchase tools/supply/and safety equipment, goal is to construct a gazebo @ our NEC headquarters NLT 29 Sep 13. ASD3, Garrison leadership, and local Safety POC has granted our request, upon receipt please process remaining purchase request prior to Wednesday (18 Sep 13).” [Tab 11, [NEC Director] email to [106<sup>th</sup> Budget Analyst], dated September 17, 2013].

September 18, 2013 – LTC [AST Deputy Director], Area Support Team 3, Deputy Director, informs Mr. [NEC Director] that the purchase will not be approved – “Construction of the requested gazebo is classified as a furniture request and can’t be purchased using the current justification due to fiscal constraints.” LTC [AST Deputy Director] then provided other potential avenues to obtain funding. Mr. [AST Director] was copied on this email. [Tab 11, LTC [AST Deputy Director] email to [NEC Director], dated September 18, 2013].

October 15, 2013 – Mr. [Hand Receipt Holder] pays Home Depot \$79.01 to pick-up the merchandise ordered on September 3, 2013. [Tab 12, Home Depot receipt].

It should be noted that contrary to the above chronology developed from the available evidence, the following testimony was provided to the IO on March 13, 2014, by Mr. [AST Director] when questioned about his knowledge of the gazebo materials purchase:

- “- What do you know about the items bought at Home Depot for the purpose of building a Gazebo? Nothing really I heard about it from the new ASD of AST3
- Who authorized this purchase? I do not know
- What was the reason the purchase was to be categorized as "furniture" instead of "construction materials"? Do not know.”

### *Discussion of Allegation 7*

There is nothing inherently wrong with using a GPC to purchase supplies, materials, equipment, etc. That is the purpose of a GPC. There is nothing wrong with an agency expending funds on a gazebo, a picnic area, or a shelter for smokers. These types of facilities or structures are commonplace on federal installations. An agency usually categorizes purchases into a variety of categories for budgetary purposes. In this case, the higher headquarters determined that a gazebo should be categorized as “furniture.” There is no indication this was improper or done with any wrongful intent.

The facts are fairly straightforward. Mr. [NEC Director] received the “go-ahead” from Mr. [AST Director] to proceed with the purchase of a gazebo. Mr. [NEC Director] obtained quotes from Home Depot and Mr. [Hand Receipt Holder] forwarded the first quote to the brigade S-8. The S-8 authorized the purchase request and Mr. [Hand Receipt Holder] completed the purchase. Upon further review of the purchase, higher headquarters determined the gazebo was considered furniture, but due to the tight fiscal crisis that was prevalent across the federal government for the greater part of calendar year 2013, especially for DoD and Army activities, higher headquarters determined that it was not the appropriate purchase to be making during those tight budgetary times. Hence, it directed the NEC to return the items to Home Depot. The items were then returned, as was reflected in the assembled evidence.

As an aside, a few words to address the testimony made by Mr. [AST Director] in his March 13, 2014 testimony when he stated he did not really know anything about the gazebo purchase until he heard about it from his replacement. The facts show Mr. [AST Director] was copied on at least two of the emails regarding the disapproval of the gazebo purchase while he was still the Area Support Team Director. Mr. [AST Director] likely discussed the gazebo purchase with Mr. [NEC Director] but does not recall the discussion because of the issue’s relative insignificance when compared to the numerous, high priority issues facing a Director each day.

#### **CONCLUSION: Army Findings as to Allegation 7:**

Though the allegation is SUBSTANTIATED, there is no finding of wrong-doing. As reflected in the evidence and the above discussion, Mr. [NEC Director] initiated a request to purchase gazebo materials using the GPC, which was appropriate to use for minor purchases as in the instant case. There is nothing inherently wrong with using a GPC to purchase supplies, materials, equipment, etc., or with an agency expending funds on a gazebo, a picnic area, or a shelter for smokers. These types of facilities or structures are commonplace on federal installations. An agency usually categorizes purchases into a variety of categories for budgetary purposes. In this case, the higher headquarters determined that a gazebo should be categorized as “furniture.” Thus, when Mr. [NEC Director] directed a fairly routine purchase, the purchase was made, and upon further review, the brigade determined the purchase was not appropriate at *that time* because of the *then existing fiscal constraints*. There is no indication that Mr. [NEC Director]’s actions surrounding the gazebo were improper or done with any wrongful intent.

**OSC REFERRED ALLEGATION 8: Contract employees are permitted to use government-owned vehicles to conduct on-base work, while federal employees are required to use their own vehicles for both on and off-base work.**

*Summary of the Evidence Pertaining to Allegation 8*

The five witnesses who provided written statements (Mr. [Network Specialist #1] on March 10, 2014; Mr. [Chief, IT Support] on March 10, 2014; Mr. [Chief, Business and Plans] on February 21, 2014; Mr. [Network Specialist #2] on March 10, 2014; and Mr. [NEC Director] on March 7, 2014), were unanimous in stating that the NEC has two government-owned vehicles and no one is required to use their privately owned vehicle. However, some witnesses stated personnel prefer to use their privately owned vehicles to avoid the “paper-work drill” or for other reasons such as for convenience” and because “it is time consuming to go to B527 (.4Miles) to pick up a GOV vehicle” from another location just to get a government vehicle.

The contract states that “[t]he Government will provide a vehicle, if available, when an Information Systems or NOC (sic) contractor employee must either travel off Fort Buchanan or transport equipment in order to perform contract duties.”

*Discussion of Allegation 8*

The Army owns and leases vehicles for the performance of official duties by government personnel. Government contractors may be authorized, by the terms of the contract, to use “government furnished equipment,” such as vehicles. In this case the contract authorizes contractor employees to use the NECs vehicles in certain circumstances. There is no evidence the contractor employees used the NEC vehicles in an unauthorized manner.

## **VIOLATIONS OR APPARENT VIOLATIONS OF LAW, RULE, OR REGULATION**

The investigation into the matters referred by OSC revealed that Mr. [NEC Director] violated 5 CFR 2635.702(c) and paragraph 3-209 of DoD Regulation 5500.07-R (Joint Ethics Regulation) by presenting contractor provided awards to contractor employees. In doing so, Mr. [NEC Director] gave the impression or appearance that he was impermissibly endorsing or recognizing the contractor and its employees as well as showing favoritism towards them.

Mr. [NEC Director] violated 31 U.S. C. § 1342 by accepting voluntary labor when he permitted an off-duty contractor employee to accompany him on a shopping trip to Home Depot to purchase NEC related supplies.

Mr. [NEC Director] also violated the prohibition against personal services contracts in FAR 37.104 by supervising and controlling GC&E contractors as if they were Federal employees. Mr. [NEC Director]'s attempts to modify the GC&E contract on his own accord also violated the contracting authority granted only to Contracting Officers in FAR 1.6 and FAR 43.

## **CORRECTIVE ACTIONS UNDERTAKEN**

In order to correct and prevent any future occurrences of the above referenced inappropriate actions taken by Mr. [NEC Director], a targeted training program was developed for Mr. [NEC Director]. Mr. [NEC Director] completed a two hour "Overview of Acquisition Ethics" course on March 25, 2014, and a 32 hour "Contracting Officers Representative Training" course on March 24, 2014. He also completed a 74 hour Army civilian leadership course, "Civilian Foundation," on May 15, 2014.

Additionally, the 7<sup>th</sup> Signal Command (Theater) will provide in-person training to over 100 leaders, including all of its Commanders and NEC Directors, in its upcoming 7<sup>th</sup> Signal Command (Theater) Leaders Summit to be held in August 2014. The training will include topics such as recognition of contractors, prohibition on accepting voluntary services, and the prohibition on personal services contracts, and the ethics issues associated with a "blended workforce" of military and civilian personnel and contractors.

Finally, the Brigade Commander is currently working with the civilian personnel office to determine if any appropriate administrative action is warranted.

## **CONCLUSION**

The Department of the Army takes very seriously its responsibility to address, in a timely and thorough fashion, the concerns of the OSC. In this case, the Army conducted a comprehensive investigation in response to the OSC referral.

The investigation revealed a need for additional remedial training on ethical, fiscal and contract law considerations when dealing with contractors in the workplace as well as the

importance of how perceptions can affect the morale in a unit. The Army has taken the appropriate steps to ensure that all individuals, both those at the Fort Buchanan NEC worksite, as well as its most senior leaders within the 7<sup>th</sup> Signal Command (Theater), receive training to enhance their leader responsibilities in those areas.

Though most of the allegations were not substantiated, those that were reflected that Mr. [NEC Director] somewhat blurred the lines with respect to the appropriate arm's length relationship between contractor personnel and Army civilian employees.

One particular instance of Mr. [NEC Director]'s conduct calls for a special comment on my part. Clearly, no matter how well intentioned Mr. [NEC Director] was in seeking to recognize the contractor employees performing contract work for NEC as part of the "team," his *conduct* in presenting the cash gift cards to them *in the workplace gatherings* was not in accord with governing authorities, and, at a minimum, they created a reasonable perception that he was endorsing contractor employees.

However, suffice it to say that Mr. [NEC Director], in his attempt to zealously begin his "team building" approach to managing the Fort Buchanan NEC as its Director, as he sought to establish an "esprit d' corps" within his blended workforce, he still needed to be mindful of adhering to the appropriate legal standards for working with contractor employees. Though Mr. [NEC Director]'s management style was to be direct and firm, in essence, a "no nonsense" manager, he immediately took on the difficult task of addressing the poor command climate that he "inherited" when he assumed the Director's duties. Consequently, in response to these complaints, Mr. [NEC Director] implemented some new rules and enforced both the new and existing rules.

There is no evidence that Mr. [NEC Director] acted with ill intent. Rather, he did what he thought would be best for mission accomplishment, though some staff members, however, perceived that he favored certain contractor employees over the rest of the workforce. In effect, Mr. [NEC Director]'s actions substantially affected the morale of the office. Although his infractions may be viewed as "minor," they nevertheless were improper and he should have known better.

To that end, I am satisfied with the corrective actions that have been and will be taken by the 7<sup>th</sup> Signal Command (Theater) management team. Further, the Army found that no criminal violations had occurred and, thus, made no referral to the Attorney General pursuant to Title 5, USC, Section 1213(d)(5)(d).

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, USC, Section 1213(c) and (d). Please direct any further questions you may have concerning this matter to Ms. [Name Redacted], at [Redacted].

Sincerely,

//signed June 25, 2014//#

KARL F. SCHNEIDER  
Acting Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

**Army Report Documents**  
**Network Enterprise Center**  
**Fort Buchanan, Puerto Rico**  
**OSC File Number DI-14-0026**

<b><u>Tab/Exhibit</u></b>	<b><u>Description</u></b>
TAB A	Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated April 17, 2014
TAB B	Complaints received by the 7th Signal Command (Theater) Inspector General (IG) regarding the Fort Buchanan NEC, and by letter dated January 27, 2014, the 7th Signal Command (Theater), Inspector General (IG) referred these allegations to the Commander, 106th Signal Brigade, Joint Base San Antonio, Fort Sam Houston, Texas.
TAB C	Army Regulation (AR) 15-6, <i>Procedures for Investigating Officers and Boards of Officers</i> , dated October 2, 2006
TAB D	Memoranda for Mr. [IO], from the Commander, 106th Signal Brigade, Subject: Appointment of Investigating Officer, dated January 29, 2014.
TAB E	SA memorandum (with suspense of March 21, 2014) forwarding the OSC referral to the Commander, U.S. Army Network Enterprise Technology Command (NETCOM) (minus attachments).
TAB F	Memorandum for Mr. [IO], from Commander, 106th Signal Brigade, Subject: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Fort Buchanan Network Enterprise Center, dated March 5, 2014.
1	Organizational Chart for Fort Buchanan NEC
2	Organizational Chart for GC&E Contractors assigned to Fort Buchanan NEC contract

- 3 Organizational Chart for Area Support Team 3's higher headquarters, the 106th Signal Brigade, a subordinate brigade of the 7th Signal Command (Theater), headquartered at Fort Gordon, Georgia.
- 4 General Order 2014-02, dated March 6, 2014
- 5 Statement of Mr. [NEC Director], dated February 18, 2014
- 6 Statement of Mr. [NEC Director], dated March 7, 2014-with supporting documents—
- Tab A-Email between Mr. [NEC Director] and various staff members, dated November 16, 2013, Subject: OPERATIONS ORDER 201411-105. Call for Nominations for the 2013-2014 Adjutant General's Corps Regimental Officer, Warrant Officer, Noncommissioned Officer, Soldier and Civilian of the Year
- Tab B-Questionnaires filled out by several anonymous employees during Town Hall meeting and email from Mr. [NEC Director] to Mr. [NEC Employee], dated February 5, 2014, Subject: FW: Dignity and Respect at the Workplace
- Tabs C and D-Representative (legible) Questionnaires filled out by several anonymous employees during Town Hall meeting
- Tab E-Email from [President, GC&E Systems Group, Inc] to Mr. [NEC Director], dated January 14, 2014, Subject CME Tardiness 3<sup>rd</sup> Occurrence
- 7 Home Depot receipt/quote for gazebo materials purchase
- 8 Email chain between Mr. Gregory [NEC Director], Mr. [Hand Receipt Holder], Ms. [NEC Administrative Support], and Ms. [106th Budget Analyst] from August 29 – August 30, 2013, and Workflow System Purchase dated August 29, 2013.
- 9 Home Depot receipt/ Special Services Customer Invoice for order of gazebo materials
- 10 Email between Mr. [Hand Receipt Holder] and Mr. [NEC Director], dated September 27, 2013- Mr. [106th Budget Analyst], the Resource Manager from the 106<sup>th</sup> Signal Brigade and call to Mr. [Hand Receipt Holder] asking for proof of Mr. [AST Director]'s approval. The NEC did not have written confirmation and Mr. [106th Budget Analyst] directed the NEC to return the lumber to Home Depot.
- 11 Email between Gregory [NEC Director] and [106th Budget Analyst], dated September 17, 2013 concerning Mr. [NEC Director]'s actions to expedite the approval process for the gazebo by emailing Ms. [106th Budget Analyst] with "goal to construct a gazebo @ our NEC headquarters NLT 29 Sep 13. ASD3,

Garrison leadership, and local Safety POC has granted our request, upon receipt please process remaining purchase request prior to Wednesday (18 Sep 13)."

LTC [AST Deputy Director], Area Support Team 3, Deputy Director, informs Mr. [NEC Director] that the purchase will not be approved because "Construction of the requested gazebo is classified as a furniture request and can't be purchased using the current justification due to fiscal constraints." LTC [AST Deputy Director] then provided other potential avenues to obtain funding. Mr. [AST Director] was copied on this email.

- 12 Mr. [Hand Receipt Holder] pays Home Depot \$79.01 to pick-up the merchandise ordered on September 3, 2013.
- 13 Witness Listing for Army Report – DI-14-0026 (*copy only in unredacted Army Report version*)



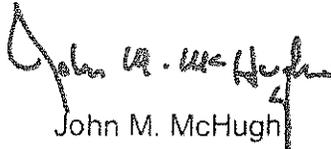
SECRETARY OF THE ARMY  
WASHINGTON

17 APR 2014

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Authority Under Title 5, U.S. Code, Sections 1213(c) and (d)

1. In accordance with Title 10, U.S. Code, section 3013(f), I hereby delegate to you certain authorities conferred on me, as agency head, under Title 5, U.S. Code, section 1213. Specifically, you are authorized to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by The Special Counsel, in accordance with Title 5, U.S. Code, sections 1213(c) and (d). In addition, you may respond to the Office of Special Counsel (OSC) in other related OSC matters, subject to coordination in each case with the Office of the Army General Counsel.
2. When the position of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) is vacant, or you are temporarily absent or otherwise not available to take timely action, these authorities may be exercised by the Principal Deputy ASA (M&RA) or by the designated Senior Official performing the duties of the ASA (M&RA). This authority may not be further delegated.
3. This delegation will remain in effect for 3 years from the date of this memorandum unless earlier modified or rescinded, in writing, by me.

  
John M. McHugh

CF:  
Office of the Army General Counsel  
Office of the Administrative Assistant to the Secretary of the Army





DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7TH SIGNAL COMMAND (THEATER)  
423 22ND STREET - BUILDING 21716  
FORT GORDON, GEORGIA 30905-5832

REPLY TO  
ATTENTION OF:

S: 28 February 2014

NETC-SFC-IG

27 January 2014

MEMORANDUM FOR Commander, 106<sup>th</sup> Signal Brigade, Joint Base San Antonio, Fort Sam Houston, TX 78234

SUBJECT: Inspector General Action Request (Unhealthy Command Climate / Contract Improprieties)

1. The 7<sup>th</sup> Signal Command (Theater) Inspector General received complaints alleging misconduct by members of your command (Fort Buchanan Network Enterprise Center (NEC)). In accordance with AR 20-1, Inspector General Activities and Procedures, we are referring the matter to you for appropriate action.
2. Request you provide a copy of the investigation to this office upon completion, NLT 28 February 2014. The results of your action will be used as the basis for our response and notification to the subjects of the investigation. Please read AR 600-20, Army Command Policy, paragraph 5-8, as part of your investigation.
3. If an Investigating Officer (IO) is appointed, contact your local SJA office prior to beginning the investigation to exchange relevant information and discuss / clarify the allegations / issues of concern.
4. Request that your investigation address, at a minimum, the following allegations and issues:
  - a. Allegation 1: That [REDACTED] NEC Director, created an unhealthy command climate, in violation of AR 600-100, Paragraph 1-6.
  - b. Allegation 2: That [REDACTED] Contracting Officer Representative, received handyman services at his residence from [REDACTED] (GC&E contract employee) as a favor, in violation of the Federal Acquisition Regulation, Paragraph 3.101-2.
  - c. Allegation 3: That on or about 25 October 2013, [REDACTED] improperly directed [REDACTED] (DA Civilian) to discuss classified information over a non-secure line, in violation of AR 380-5, Paragraph 6-13.

FOR OFFICIAL USE ONLY (FOUO)  
Dissemination is prohibited except as authorized by AR 20-1.



NETC-SFC-IG

SUBJECT: Inspector General Action Request (Case Label / Case Number)

d. Allegation 4: That on or about 14 August 2013, [REDACTED] improperly used the Government Purchase Card to make unauthorized purchases (\$2509) for gazebo materials, in violation of the Army Government Purchase Card Standard Operating Procedures, 14 January 2014.

e. Allegation 5: That [REDACTED] improperly discussed negotiated terms of the an upcoming GC&E contract to get six additional contract employees for the inside/outside plant with GC&E contract officials, in violation of the Federal Acquisition Regulation, Paragraph 3.104-3.

f. Issue 1: Were GC&E employees provided government-sponsored Avaya Voice and Switch training, in violation of Government Contract #W91RUS-08-D-0004.

g. Issue 2: Were GC&E employees moved to different positions (Network Engineers, Administrative Assistant, Communications Technician, Network Switches Configuration, IT Specialists, and Configurations Management) within the NEC without the required training and qualifications listed in Government Contract #W91RUS-08-D-0004, in violation of the Federal Acquisitions Regulation, Paragraph 3.101-2.

h. Issue 3: Were CG&E employees required to construct a gazebo and build a Christmas float at the NEC during duty hours, in violation of the Government Contract #W91RUS-08-D-0004.

5. This Inspector General document contains privileged information that is protected IAW paragraphs 3-2 through 3-5 of AR 20-1. Dissemination of the document will be restricted to the absolute minimum, consistent with your requirement to provide a reply and will be returned to this office when your action is complete. Unauthorized retention or reproduction of IG documents is strictly prohibited.

6. Your points of contact are [REDACTED] Chief, Assistance and Investigations, Inspector General Office, at DSN [REDACTED].

Encl  
AR 600-20 Excerpt

[REDACTED]  
[REDACTED]  
[REDACTED]  
Command Inspector General

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Dissemination is prohibited except as authorized by AR 20-1.

Army Regulation 15-6

Boards, Commissions, and Committees

# Procedures for Investigating Officers and Boards of Officers

Headquarters  
Department of the Army  
Washington, DC  
2 October 2006

**UNCLASSIFIED**





DEPARTMENT OF THE ARMY  
HEADQUARTERS, 106<sup>TH</sup> SIGNAL BRIGADE  
2406 GUN SHED ROAD, SUITE 3027  
JBSA FORT SAM HOUSTON, TEXAS 78234-6102

REPLY TO  
ATTENTION OF

NETC-SFB

29 January 2014

MEMORANDUM FOR [REDACTED], Area Support Director, 93<sup>rd</sup> Signal  
Brigade (Strategic), 662 Sheppard Place, Joint Base Langley-Eustis, VA 23604

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as investigating officer pursuant to AR 15-6 to conduct an investigation into a complaint of alleged misconduct at the Ft Buchanan Network Enterprise Center. Details pertaining to the reported violations are in the enclosed memorandum prepared by the Inspector General's Office of the 7<sup>th</sup> Signal Command (Theater).
2. In your investigation, use informal procedures under AR 15-6. You will make findings to assess the validity of allegations made by the complainant to determine to the maximum extent possible what actually occurred.
3. If in the course of your investigation you come to suspect that the individual has committed an offense in violation of the UCMJ, you must advise the individual of his/her rights under Article 31, UCMJ. In addition, you must provide them a Privacy Act statement before you solicit any (further) personal information. You may obtain assistance with these legal matters from the office of the Staff Judge Advocate.
4. Submit your findings and recommendations to the appointing authority, on DA Form 1574 within 10 days.

[REDACTED]  
COL, SC  
Commanding

TAB D



SECRETARY OF THE ARMY  
WASHINGTON

Suspense: March 21, 2014

SAGC

MEMORANDUM FOR Commander, U.S. Army Network Enterprise Technology Command,  
2133 Cushing Street, Fort Huachuca, Arizona 85613

SUBJECT: Whistleblower Investigation—Improper actions to benefit contractor employees at Network Enterprise Center (NEC), 106<sup>th</sup> Signal Brigade, Fort Buchanan, Puerto Rico- (Office of Special Counsel File Number D1-14-0026)

Enclosed for your action is a letter from the Office of Special Counsel (OSC), referring a whistleblower complaint related to matters in a command or organization under your authority, direction, or control (Enclosure 1).

The OSC is designated by law to receive whistleblower complaints from Department of the Army employees (Enclosure 2). When the OSC determines that there exists a substantial likelihood that an Army whistleblower complaint discloses a violation of any law, rule, or regulation; gross mismanagement or waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety, the allegations are referred to me for investigation. I am then required to investigate and submit a written report of my findings within 60 days.

You are hereby directed to initiate an investigation into the allegations referred to me by OSC. Upon completion of your investigation, ensure that you initiate appropriate corrective action as warranted. In addition, prepare a draft Army report setting forth all of the information required by Title 5, United States Code, §1213(d).

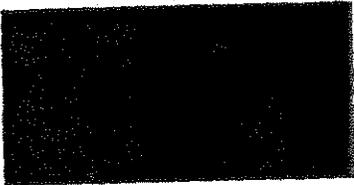
I have delegated to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) the authority to review, approve, and submit the final Army report to OSC. Upon receipt of the report, OSC will refer it to the whistleblower for comment. The Army report, the whistleblower's comments, and OSC's analysis will be forwarded to the President of the United States and to the Senate and House Armed Services Committees.

In addition, the Army report will be made available for public review and inspection on the OSC web-site and in its reading room. Because your investigation and report will directly impact perceptions of the Army as an institution, it is imperative that you

TABE

investigate these allegations and prepare your draft report in a manner that facilitates a clear understanding of the allegations and Army's response.

You must conduct a full and fair investigation and draft and submit the detailed report that OSC requires within the time allowed. A complete set of guidelines and instructions is at Enclosure 3. The Office of the Army General Counsel (OGC) is my point of contact for this matter. Accordingly, please contact [REDACTED] of OGC immediately at [REDACTED] or by email at [REDACTED] to discuss the way forward in this important effort.



Encls

CF:  
Inspector General of the Department of Defense  
Department of the Army Inspector General  
Staff Judge Advocate, NETCOM  
Office of The Judge Advocate General, Labor and Employment Law Division  
[REDACTED]  
Executive Communications and Control [REDACTED]



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 106<sup>TH</sup> SIGNAL BRIGADE  
2406 GUN SHED ROAD, SUITE 3027  
JBSA FORT SAM HOUSTON, TEXAS 78234-6102

REPLY TO  
ATTENTION OF

NETC-SFB

MEMORANDUM FOR [REDACTED] Area Support Director, 93rd Signal  
Brigade (Strategic), 662 Sheppard Place, Joint Base Langley-Eustis, VA 23604

SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer  
Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged  
Misconduct at the Fort Buchanan Network Enterprise Center.

1. References:

- a. Reference the caption for the above referenced initial appointment order
- b. Secretary of the Army Memorandum subject: Whistleblower Investigation-  
Improper actions to benefit contractor employees at Network Enterprise Center (NEC),  
106<sup>th</sup> Signal Brigade, Fort Buchanan, Puerto Rico (Office of Special Counsel File  
Number DI-14-0026).
- c. U. S. Office of Special Counsel Letter dated February 21, 2014, subject: OSC File  
No. DI-14-0026.

2. In addition to your responsibilities under reference 1.a., you are also hereby  
appointed as an investigating officer pursuant to Army Regulation (AR) 15-6,  
Procedures for Investigating Officers and Boards of Officers, to conduct an informal  
investigation into all facts and circumstances surrounding related issues to your current  
investigation referenced in 1.a. above. This expanded investigative effort will address an  
anonymous whistleblower's allegations of violations of laws, rules and regulations and  
an abuse of authority at Network Enterprise Center (NEC), 106<sup>th</sup> Signal Brigade, Fort  
Buchanan, Puerto Rico. The purpose of your investigation is to determine the validity of  
the whistleblower's allegations and make findings concerning whether any wrongdoing  
occurred, and if so, by whom, and whether adequate policies and procedures are in  
place to preclude any recurrence of any improprieties, irregularities, or misconduct  
disclosed during your inquiry.

3. You will review the allegations and background information provided in the Office of  
Special Counsel (OSC) referral letter, Reference 1.c., and ensure your investigation and  
the resulting Report of Investigation (ROI) addresses all of the allegations referenced  
below in paragraph 4.

TAB F

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SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center

4. You will specifically investigate and address in the ROI the following allegations:

a. Government-sponsored Avaya Voice training was improperly provided to contract employees [REDACTED] and [REDACTED] between September 20, 2013, and October 4, 2013. If so, determine whether any laws, rules, or regulations were violated, including whether this conduct is a violation of the contract and/or an improper obligation and expenditure of Government funds?

b. [REDACTED] and [REDACTED] were promoted to Network Engineer contract positions by [REDACTED] an agency employee, without the guidance of the Contracting Officer, [REDACTED] or Contract Site Manager, [REDACTED]. If so, determine whether this conduct violates any laws, rules, or regulations, including Federal Acquisition Regulation (FAR) 37.104 by creating the appearance of Government control over contractor employees (that is, the appearance of a "personal services" contract)? Additionally, if true, did [REDACTED] actions also violate FAR 3.101 and 5 CFR 2635.101, which require employees to act impartially and to put forth an honest effort in performing their duties?

c. [REDACTED] and [REDACTED] were promoted without the required experience, training, and certifications for their positions. If so, determine whether this conduct violates any laws, rules, or regulations, including FAR 37.104 by creating the appearance of Government control over contractor employees and a "personal services" contract? If so, did this conduct also result in any contractually related harm to the Government, such as a deficiency in contract performance?

d. Contract employees regularly engage in inherently governmental functions, which are functions so intimately related to the public interest as to mandate performance by Government employees and that require exercise of discretion in applying Government authority or making value judgments in making Government decisions. If so, did this conduct violate the contract and FAR 7.503? If this conduct did not violate the contract, does the contract itself improperly require contractors to perform inherently governmental functions, in violation of FAR 7.503? Additionally, determine whether contractor employees engage in such activities as attending meetings for federal employees and conducting training for top management, and, if such activities constitute engaging in inherently governmental functions.

e. [REDACTED] directed contract employees to work on projects outside the scope of their contract, such as construction of a gazebo on government property. If so, did the Government pay the contractor for this work, and did this constitute an

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SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center.

unauthorized expenditure of contract funds? Additionally, if so, did this work violate or subvert government rules on competition and/or violate 5 CFR 2635.704, which prohibits using contractor services "for other than authorized purposes?"

f. Materials for the gazebo building were purchased on a Government Purchase Card (GPC) at Home Depot, but were later returned to the stored and logged by the responsible parties as "furniture." If so, did this conduct violate any laws, rules, or regulations, including any GPC rules or regulations and/or 5 CFR 2635.101, which requires employees to put forth an honest effort in performing their duties?

g. Contract employees are permitted to use government-owned vehicles to conduct on-base work, while federal employees are required to use their own vehicles for both on and off-base work. If so, does this conduct violate any laws, rules, or regulations, and also the contract terms and/or 5 CFR 2635.704, which prohibits Government employees from using Government property for other than authorized purposes?

h. [REDACTED] improperly discussed negotiated terms of the an upcoming GC&E contract to get six additional contract employees for the inside/outside plant with GC&E contract officials. If so, did this conduct violate FAR 3.104-3 and did [REDACTED] improperly attempt to discuss contract modifications without the authority to do so or without the presence of a warranted contracting officer?

i. Contract employees who are employed by GC&E System Group regularly receive improper benefits, as a result of their relationships with agency employees, including such items as gift cards for meals, awards for "outstanding performance", and a lunch paid for by [REDACTED] for the winning teams in an inventory form completion competition.. If so, did this conduct violate any laws, rules, or regulations concerning the expenditure of agency funds on contract employee awards including FAR 3.101-1 and/or Department of Defense Instruction 1400.25, volume 451(November 4, 2013) and/or did this conduct create an appearance of an improper relationship violating the rules of ethics (Executive Order 12674 as modified by Executive Order 12731)?

5. This investigation has been directed by the OSC pursuant to a whistleblower complaint. Your report of investigation will form the basis for the development of the final Army narrative report that will be submitted to the OSC in satisfaction of the requirement imposed on agencies by 5 United States Code 1213. Because this is a whistleblower investigation, the whistleblower has certain rights. Pursuant to OSC policy, you normally must interview the whistleblower. Specifically, he/she must be interviewed and afforded a meaningful opportunity to provide his/her oral testimony and

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SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center.

to provide written documentation, if any, in support of his/her allegations. However, in the instant case, the whistleblower has chosen to remain anonymous. If, during the course of an interview with a witness, an individual discloses that they are the whistleblower, you are to contact [REDACTED] and advise them of this assertion. In turn, [REDACTED] will contact [REDACTED] Office of the Army General Counsel, of this matter and she will advise as to how to proceed further with this witness.

6. This investigation takes priority over all normal duties, TDY and leave. You are directed to start this investigation upon receipt of this notice. In conducting this investigation, use the informal procedures of AR 15-6, Chapter 4. You will be required to interview witnesses, obtain statements, and obtain documentary evidence (e.g., letters, e-mails, investigative reports, etc.). To the fullest extent possible, all witness statements will be sworn and reduced to writing. You will interview all witnesses in person, if practical. You should contact those witnesses you consider relevant during the course of your investigation. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. Upon completing your investigation, make appropriate findings and recommendations, including corrective and/or disciplinary actions, and report them to me through the Office of the Command Judge Advocate.

7. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor, Ms [REDACTED] who can be contacted at [REDACTED]. You will consult with your legal advisor prior to beginning your investigation. Before beginning your investigation, you will receive a legal briefing for further guidance and additional information about how you should proceed from your legal advisor.

8. If you obtain or are provided evidence from other investigative reports, you may consider the exhibits collected by the investigator(s), but you may not consider another investigator's conclusions as evidence.

9. You should contact witnesses you consider relevant during the course of your investigation. As you develop new facts, you should interview any individuals that you deem necessary to complete a thorough investigation. Obtain sworn statements from all witnesses whom you determine may have information relevant to this

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SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center.

investigation. Document all statements in writing, preferably on a DA Form 2823 (Sworn Statement), and have witnesses verify their statements when final. In the event that you are unable to obtain a sworn statement from a witness, you will prepare a detailed memorandum for record (MFR) memorializing the interview and explaining why a sworn statement was not obtained. You should maintain an electronic version in "word" of all witness statements. This will facilitate the use of extracts directly from the witness's statement, to be used if needed, during the drafting of the final Army narrative report which will be submitted to OSC. You should conduct separate interviews for each witness and conduct the interviews in person if practical. In addition, you must provide all persons interviewed with a Privacy Act statement before you solicit any information.

10. ***It is unnecessary to, and you are strongly encouraged not to, obtain personal identifying information (Social Security Numbers) from the witnesses.***
11. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.
12. Clarify any contradictory statements to the greatest extent possible.
13. If certain evidence conflicts with other evidence, state what you believe and why. Reference your analysis and findings to the specific evidence upon which you rely.
14. ***If any question asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those additional questions in order to further develop the record evidence.*** This will provide for a full and complete development of the evidence needed to support the report of investigation's findings and conclusions which will form the basis for the preparation of the final Army narrative report for submission to the Office of the Special Counsel.
15. Recommend remedial measures, including any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. Such remedial actions may include any personnel or disciplinary actions you deem appropriate. The recommendations must be consistent with the findings. They can be negative (e.g., ***no further action necessary***). The legal advisor should ensure that the recommendations make sense and are supported by the record of investigation.

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SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center.

16. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. If in the course of your investigation, you suspect certain people may have committed criminal conduct, you must advise them of their right under Article 31, UCMJ or the Fifth Amendment, U.S. Constitution, as appropriate. In such case, waivers must be documented using DA Form 3881, Rights Warning Procedure/Waiver Certificate. If you believe the scope of your investigation should be expanded beyond its current focus, please report back to me so that I may take appropriate action. Consult your legal advisor if you have any questions regarding these procedures.

17. During the course of your investigation, you will find it necessary to interview civilian employees. Generally speaking civilian employees are required to cooperate with official investigations. There are some exceptions.

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they reasonably believe the interview could result in a disciplinary action against them. Should a bargaining unit employee seek to invoke this right, simply reschedule the interview for at least 24 hours to allow the employee time to arrange for union representation. The Civilian Personnel Advisory Center can tell you whether any particular employee you wish to interview is a member of the bargaining unit. Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative.

b. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal proceeding, may refuse to cooperate without a grant of immunity. Should any civilian employee decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to proceed.

c. If the matter you are investigating involves a grievance, a personnel practice or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies in your case and how to proceed if it does.

d. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer for the applicable contract to request cooperation

NETC-SFB

SUBJECT: Addendum to 29 January 2014 Appointment as Investigating Officer Pursuant to AR 15-6 to Conduct an Investigation into a Complaint of Alleged Misconduct at the Ft Buchanan Network Enterprise Center.

18. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. An investigating officer may not, absent military exigency, investigate someone senior to himself or herself.

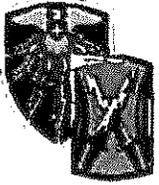
19. If you believe the scope of your investigation should be expanded beyond its current focus, please report back to me so that I may take appropriate action. Consult your legal advisor if you have any questions regarding these procedures.

20. Your legal advisor during the course of your investigation will be Ms [REDACTED] [REDACTED]. Consult with her prior to beginning your investigation for further guidance and additional information about how you should proceed. You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before warning any witness as a suspect and before putting your report in final form.

21. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package to me, through the Office of the Command Judge Advocate by May 1, 2014.

22. If you require additional time to complete your investigation, you must request an extension in writing stating the reason(s) for your request and an approximate completion date and send it directly to me for approval. I must personally approve any extensions.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Commanding



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Director  
 Office Manager  
 GS-07/0303

Title: Administrative Support Assistant  
 Series/Grade: GS-0303-07  
 PD# 399587, 2443287  
 Para-line# 0060/002

Business & Plans Division  
 Division Chief (W6SAAA)  
 Title: SUPV IT Spec (PCYPLN)  
 Series/Grade: GS-0301-13  
 PD# [REDACTED]  
 Para-line# 0063/001

Operation Center Chief  
 Division Chief (W6S2AAB)  
 Title: SUPV IT Spec (NETWORK)  
 Series/Grade: GS-2210-13  
 PD# [REDACTED]  
 Para-line# 052A/001

IT System Support Chief  
 Division Chief (W6S4AAC)  
 Title: SUPV IT Spec (NET/OS)  
 Series/Grade: GS-2210-13  
 PD# [REDACTED]  
 Para-line# 0062/001

Information Assurance Division  
 Division Chief (W6SAAADA)  
 Title: SUPV IT Spec (INFOSEC)  
 Series/Grade: GS-0301-13  
 PD# [REDACTED]  
 Para-line# 063B/001

Title: IT Spec (NETWORK)  
 Series/Grade: GS-2210-12  
 PD# 116845, 2043706  
 Para-line# 063B/002

Title: MGT SUPV Spec  
 Series/Grade: GS-0301-09  
 PD# 248137, 1178351  
 Para-line# 0060/002

Title: IT Spec (NETWORK)  
 Series/Grade: GS-2210-12  
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 Para-line# 062A/003

Title: IT Spec (SYSADMIN)  
 Series/Grade: GS-2210-12  
 PD# 404422, 2482438  
 Para-line# 062B/001

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 Series/Grade: GS-2210-12  
 PD# 219164, 2043111  
 Para-line# 062B/001

Title: IT Spec (INFOSEC)  
 Series/Grade: GS-2210-12  
 PD# 383271, 2310231  
 Para-line# 063B/01

Title: Logistic MGT Spec  
 Series/Grade: GS-0346-08  
 PD# 423782, 2868951  
 Para-line# 061A/06

Title: IT Spec (NETWORK)  
 Series/Grade: GS-2210-12  
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 Para-line# 062A/002

VACANT  
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 Para-line# 063A/01

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 Para-line# 061A/005

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 Para-line# 062A/002

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 PD# S0023, 2030096  
 Para-line# 061B/01

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 Para-line# 063B/01

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 Para-line# 062B/001

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 Para-line# 061B/01

VACANT  
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 PD# S0023, 2030096  
 Para-line# 061B/01

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 Series/Grade: GS-2210-11  
 PD# 383467, 2533705  
 Para-line# 063B/03

VACANT  
 Title: Administrative Spec  
 Series/Grade: GS-0301-11  
 PD# 184552, 717106  
 Para-line# 061A/03

LWOP  
 Title: IT Spec (SYSADMIN/CUSTSPT)  
 Series/Grade: GS-2210-09  
 PD# S0515, 289993  
 Para-line# 061B/01

VACANT  
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 Series/Grade: GS-2210-11  
 PD# S0023, 2030096  
 Para-line# 061B/01

Title: IT Spec (INFOSEC)  
 Series/Grade: GS-2210-09  
 PD# 252148, 1228440  
 Para-line# 061A/004

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 Series/Grade: GS-2210-09  
 PD# 149952, 480722  
 Para-line# 061A/006

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 Para-line# 061A/006

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 Para-line# 061B/01

Title: IT Spec (INFOSEC)  
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 Para-line# 063B/005

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 Para-line# 063B/005

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 Series/Grade: GS-2210-11  
 PD# S0023, 2030096  
 Para-line# 061B/01

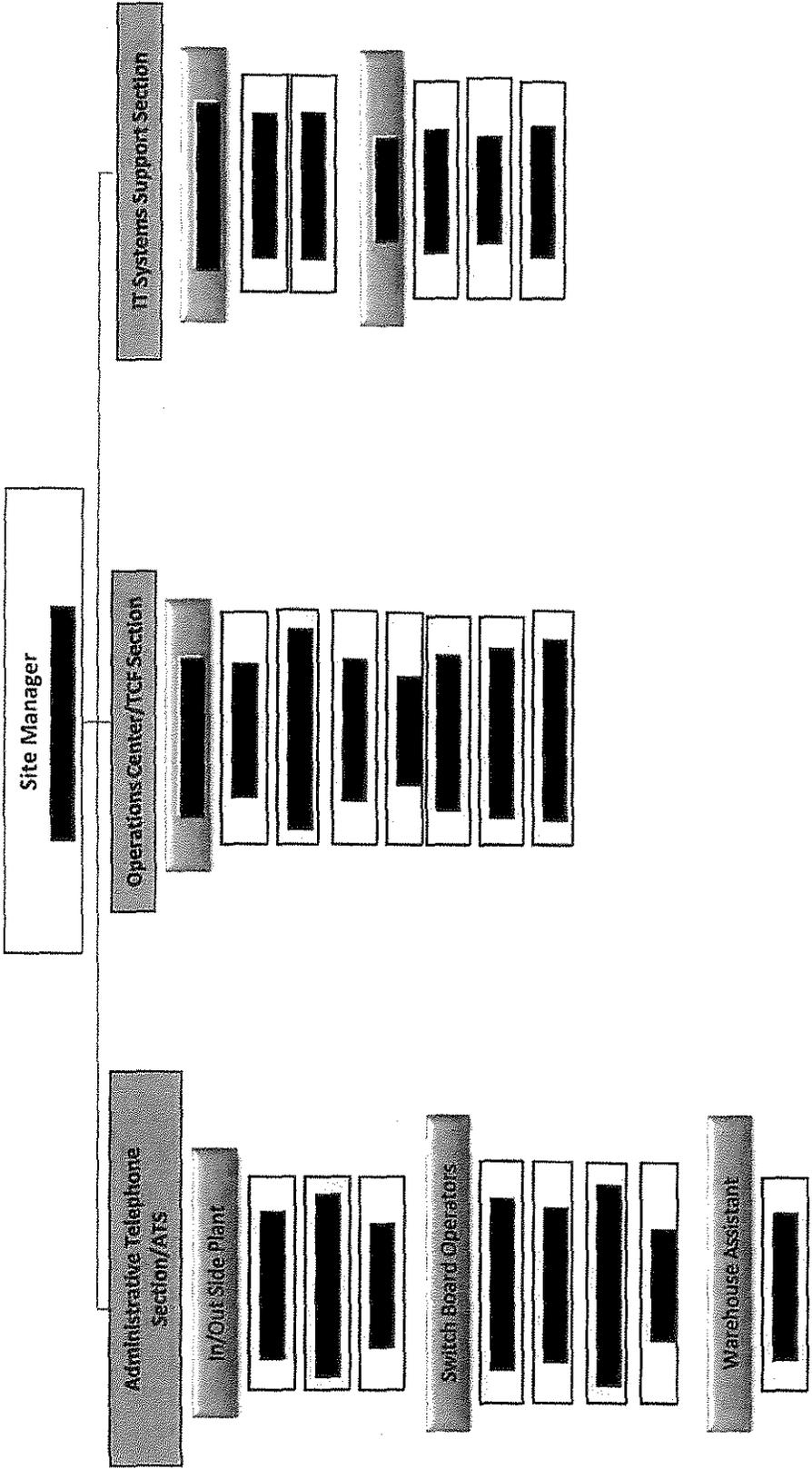
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 PD# 252148, 1228440  
 Para-line# 061A/004

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 Authorized: 38  
 (28 DAC/10 CME)  
 On Hand: 41  
 (23 DAC/70 CME)  
 DAC CAP: 28  
 Vacant: 4  
 UIC: W6SCAA

UNCLASSIFIED

As of Date: 01 Feb 14

1792

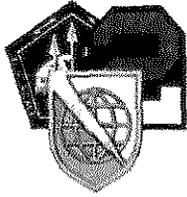


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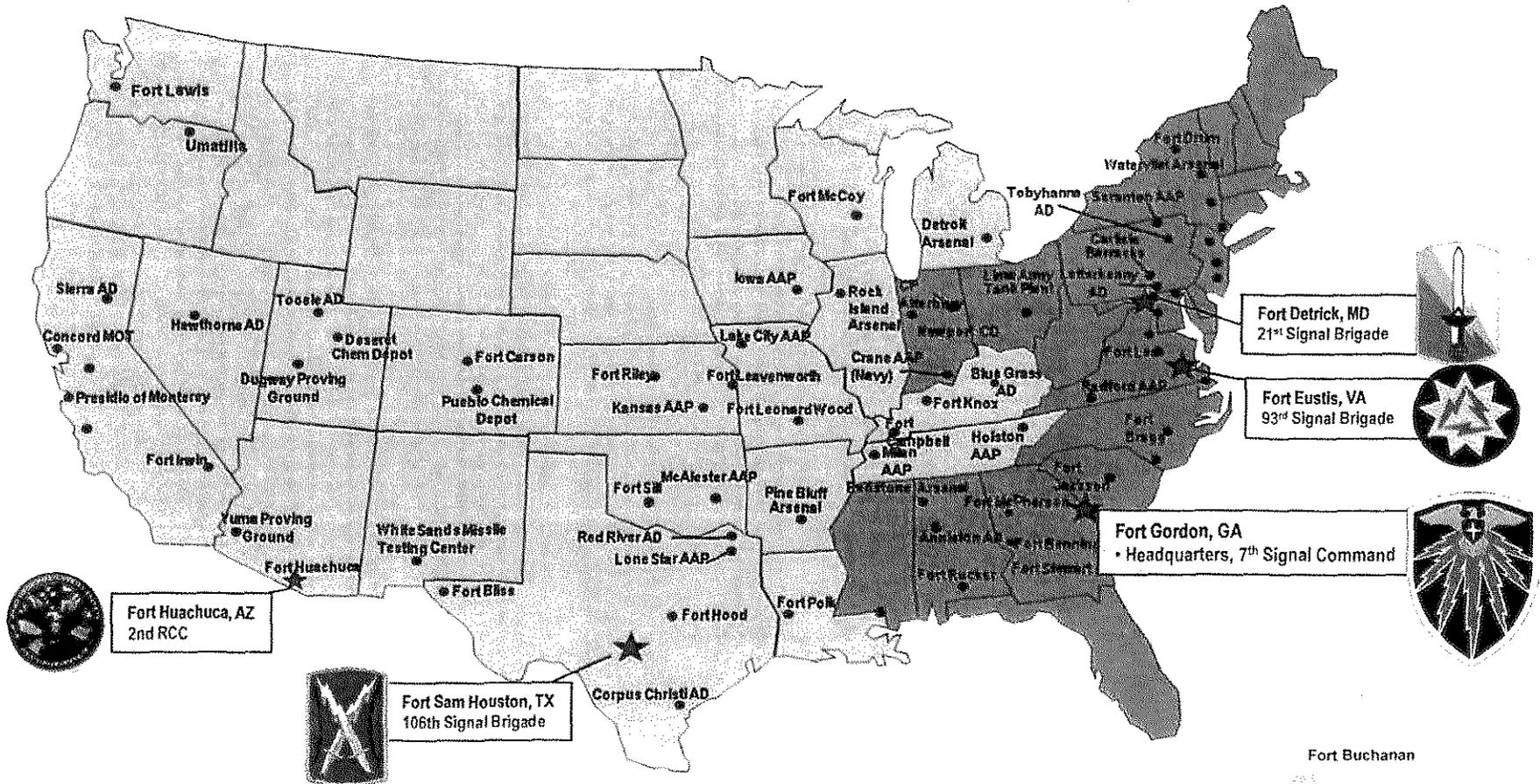
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TAB 2





# 7th SC (T) Headquarters Locations



GENERAL ORDERS }  
No. 2014-02 }

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
WASHINGTON, DC, 6 March 2014

**AFFIRMATION OF SECRETARY OF THE ARMY COMMITMENT TO UNITY OF EFFORT; DESIGNATION OF U.S. ARMY CYBER COMMAND AS AN ARMY FORCE COMPONENT HEADQUARTERS; REACTIVATION OF SECOND ARMY AND DESIGNATION AS A DIRECT REPORTING UNIT; DISESTABLISHMENT OF THE U.S. ARMY NETWORK ENTERPRISE TECHNOLOGY COMMAND/8TH SIGNAL COMMAND (ARMY) AS A DIRECT REPORTING UNIT AND REASSIGNMENT TO SECOND ARMY; DESIGNATION OF GENERAL COURT-MARTIAL CONVENING AUTHORITIES**

1. **AFFIRMATION OF SECRETARY OF THE ARMY COMMITMENT TO UNITY OF EFFORT.** By this Order, the Secretary of the Army hereby affirms a staunch commitment to unity of effort, effective synchronization of capabilities and resources and utmost transparency in communication and information sharing in the execution of missions and functions addressed herein, consistent with law, regulation and policy.

2. **DESIGNATION OF U.S. ARMY CYBER COMMAND AS AN ARMY FORCE COMPONENT HEADQUARTERS.**

a. This affirms that on 1 October 2010, the Secretary of the Army established U.S. Army Cyber Command (UIC: W6UXAA) as an operational Army force reporting directly to Headquarters, Department of the Army (HQDA). Subsequently, at the direction of the Secretary of Defense, the Secretary of the Army assigned U.S. Army Cyber Command to U.S. Strategic Command. The Secretary of Defense has designated U.S. Army Cyber Command as the Army Force Component Headquarters of U.S. Cyber Command, a sub-unified command of U.S. Strategic Command.

b. Consistent with applicable law, U.S. Army Cyber Command supports the execution of missions and functions assigned to the Commander, U.S. Strategic Command and the Commander, U.S. Cyber Command by the President of the United States or the Secretary of Defense with the consent of the President, including Cyber Operations, as defined in applicable National Command Authority directives.

c. The Commander, U.S. Army Cyber Command exercises operational control of Army forces, as delegated by the Commander, U.S. Strategic Command and the Commander, U.S. Cyber Command, with regard to the execution of missions and functions assigned to U.S. Army Cyber Command, in accordance with the policies and procedures established by the Secretary of Defense. The Commander, U.S. Army Cyber Command, as directed by the Commander, U.S. Strategic Command and the Commander, U.S. Cyber Command, will also serve as the Commander, Joint Force Headquarters-Cyber, in support of Commander, U.S. Strategic Command and Commander, U.S. Cyber Command requirements for command and control of joint and/or coalition forces.

d. The Commander, U.S. Army Cyber Command exercises administrative control of subordinate commands, organizations and personnel and exercises operational control over Army forces as delegated by a combatant commander or sub-unified commander with regard to the execution of missions assigned to U.S. Army Cyber Command, in accordance with the



policies and procedures established by the Secretary of Defense. This general order shall not infringe on the combatant command authority vested by law in combatant commanders or alter the command relationships and authorities specified by the Secretary of Defense. In the event of a discrepancy between this order and the policies and procedures established by the Secretary of Defense, the Secretary of Defense policies or procedures take precedence.

e. U.S. Army Cyber Command is the primary Army headquarters responsible for cyberspace operations in support of Joint requirements and serves as the single point of contact for reporting and assessing Army cyberspace incidents, events and operations in Army networks, and for synchronizing and integrating Army responses thereto. U.S. Army Cyber Command, in coordination with Second Army, plans, coordinates, integrates, synchronizes, directs and conducts an integrated defense within all Army networks, and, as directed, within Department of Defense Information Networks. Mindful of the Secretary's commitment to unity of effort, the HQDA Chief Information Officer/G-6, U.S. Army Cyber Command and Second Army will maximize communication and information sharing in the execution of these missions and functions. Other Army forces, organizations and officials shall provide support to U.S. Army Cyber Command in its execution of responsibilities assigned by the Secretary of the Army in this Order, or as otherwise directed by the Secretary of the Army, in the same manner as such support is provided to Army Service Component Commands or to other Army Force Component Headquarters.

### 3. REACTIVATION OF SECOND ARMY AND DESIGNATION AS A DIRECT REPORTING UNIT.

a. Effective immediately, Second Army is reactivated, with the lineage and honors specified by the U.S. Army Center of Military History, and designated as a Direct Reporting Unit (UIC: W6Z9AA) of the Chief Information Officer/G-6, HQDA. The Commander, U.S. Army Cyber Command is dual-hatted as the Commander, Second Army.

b. Second Army serves as the single point of contact for Army missions and functions related to reporting on, assessing, planning, coordinating, integrating, synchronizing, directing and conducting Army network operations. Subject to coordination with U.S. Army Cyber Command, Second Army plans, coordinates, integrates, synchronizes, directs and conducts network defense measures within all Army networks and, as directed, within Department of Defense Information Networks. Mindful of the Secretary's commitment to unity of effort, Second Army will maximize communication, coordination, and information sharing with the HQDA Chief Information Officer/G-6 and U.S. Army Cyber Command in the execution of these missions and functions. Other Army forces, organizations and officials shall provide support to Second Army in its execution of responsibilities assigned by the Secretary of the Army in this Order, or as otherwise directed by the Secretary of the Army.

c. Second Army and its assigned elements comprise an Army force retained by the Secretary of the Army in accordance with Title 10, United States Code, Section 162(a)(2), to carry out the functions assigned to the Secretary in Titles 10, 40 and 44 of the United States Code. Unless otherwise directed by the Secretary of Defense, Second Army and other forces so retained by the Secretary of the Army are not available for assignment to a combatant command or to execute missions or functions assigned to a combatant command.

### 4. DISESTABLISHMENT OF THE U.S. ARMY NETWORK ENTERPRISE TECHNOLOGY COMMAND/9TH SIGNAL COMMAND (ARMY) AS A DIRECT REPORTING UNIT AND REASSIGNMENT TO SECOND ARMY.

Effective immediately, U.S. Army Network Enterprise Technology Command/9th Signal Command (Army) (NETCOM) (UIC: W4NHAA) is disestablished as a direct reporting unit of the HQDA Chief Information Officer/G-6 (UIC: W4NJAA) and is reassigned, together with its authorities and responsibilities, subordinate elements, personnel and resources (including funding and equipment), to Second Army. The Commander, NETCOM is dual-hatted as the Deputy Commanding General, Second Army.

5. DESIGNATION OF GENERAL COURT-MARTIAL CONVENING AUTHORITIES. The commanding officers of U.S. Army Cyber Command and Second Army are designated as General Court-Martial Convening Authorities (GCMCA) pursuant to Article 22(a)(8), Uniform Code of Military Justice.

6. SUPERSESION. Effective immediately, the provisions of Department of the Army General Orders 2002-5 and 2006-31 inconsistent with this General Order are hereby superseded. The authorities and responsibilities conveyed by those parts of Department of the Army General Orders 2002-5 and 2006-31 that remain in effect are incorporated by reference in paragraph 4 of this General Order. This General Order further supersedes Department of the Army General Orders 2010-26, dated 1 October 2010.

[DAMO-2A]



Secretary of the Army

DISTRIBUTION: This publication is available in electronic media only and is intended for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

# SWORN STATEMENT

For use of this form, see AR 190-45; the proponent of this form is ODCSOPS

## PRIVACY ACT STATEMENT

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 Dated November 22, 1943 (SSN)  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately recorded  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION BLDG 390	2. DATE (YYYYMMDD) 3 11 03 18	3. TIME 1731	4. FILE NUMBER
5. LAST NAME	6. SSN	7. GRADE/STATUS SS14	
8. ORGANIZATION OR ADDRESS FORT BUCHANAN, PR 00934			

9. I, \_\_\_\_\_, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Unhealthy Command Climate: Twelve months ago, during a Town Hall meeting, numerous complaints were submitted covering four core areas requiring immediate leadership involvement/attention:

- Promotion and Hiring Actions: Four employees indicated hiring process and promotions were not conducive to Equal Opportunity environment. In addition, NEC employee's were given Supervisory duties without appropriate training and experience which resulted in a "fiasco" as one employee clearly depicted within his/her write-up. A few submitted comments below:
  - No relatives and friends should be hired.
  - Hire only qualified candidates
- Communications Issues: Profanity/Bad language was used throughout the workplace, on several occasions employees would terminate phone calls due to distant-end hearing profanity over phone conversation. Work schedules were not published well in advance; numerous employees expressed their concerns ref planning leave, scheduling appropriate personnel to perform operational necessities in order to maximize operational production and enhance customer reaction time. Monthly Shift scheduled was published a few days before execution/attendance. A few written comments are listed below:
  - Supervisors need to be truthful and don't isolate employees
  - Hallway discussion and shooting from the holster
  - Contractor bilingual deficiencies
  - I hate putting out fires
  - Last minute tasking
  - Information not getting passed down
  - Late notices
  - Conflict between DAC and Contractors
  - Information flow between management and employees
  - Doing away with "because I said so & because that's the way it is" concept
  - Poor written instructions
  - Do away with 24/7 due to no operational requirement
  - 11:00 P.M. - 07:00 A.M. shift is not necessary

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND PAGE NUMBER MUST BE INDICATED.



STATEMENT OF [REDACTED]

TAKEN AT [REDACTED]

*Room 320 at [REDACTED] 1st*

DATED [REDACTED]

*20/02/10 12:11*

9. STATEMENT (Continued)

- Team Work Issues [REDACTED]
- Not including personnel during planning [REDACTED]
- Employees break the rules constantly [REDACTED]
- No trust and micromanagement [REDACTED]
- Lack of personal accountability [REDACTED]
- Trouble ticketing process [REDACTED]
- GC&E personnel should be entrusted [REDACTED]
- System Support Division should be responsible for Configuration Management [REDACTED]
- Joining Telephone and Help Desk personnel [REDACTED]
- Combining Service Desk and Help Desk [REDACTED]
- Ticketing process is taking long to assign and no follow-up [REDACTED]
- Restructure Help Desk and Service Desk [REDACTED]
- Change the process ref approving CAPRs [REDACTED]
- Consolidate all customer calls into a single point (Help Desk) [REDACTED]

- Training Deficiencies [REDACTED]
- Poor talent at the Help Desk [REDACTED]
- Equal opportunity training [REDACTED]
- Lack of Cross Training [REDACTED]
- Training should be encourage and supported [REDACTED]
- No inventory controls [REDACTED]
- LAN Support and Tech Control should cross-train [REDACTED]
- Training work force with new technologies [REDACTED]
- DAC and CME's need CISCO and Brocade training [REDACTED]
- Increase classroom and hands on training [REDACTED]
- Sharepoint Training [REDACTED]
- Customer Service [REDACTED]
- Focus on Customer Service [REDACTED]
- Take care of customer's period [REDACTED]

After careful review of employee's concerns, customer production deficiencies, and lack of coaching/training/mentoring within the NEC workforce I implemented numerous actions over the last twelve months such as: No sleeping at the work place, arriving late and/or leaving early is unacceptable, profanity at the workplace will not be tolerated, schedules will be published 90 days in advance, smoking will not be tolerated inside 50 feet from each facility, no cooking with open fires inside a facility, unplanned overtime will not be executed unless Operational Impact is determined/approved by NEC Director, one voice will represent the NEC via Operations Center, consolidating Service Desk and Help Desk to better serve our customers, CME's will no longer work without government representation, working between 2200 to 0600 and weekends will be shared between DAC's and CME's, training opportunities will be shared between DAC's and CME's, Supervisors will be held accountable for NEC property via Sub-HR, No golfing on government time, no alcohol consumption at the work place, nepotism hiring will not be tolerated between DAC's and CME's, OPORDs will be completed on time, IAVA's will exceed 95%, STIGs will be executed, IA Awareness training will be enforced, cell phones are not authorized in a facility processing collateral information, lunch breaks will not exceed 60 minutes, personnel will not take 59 minutes on their own accord, employees will be respected and screaming will not be tolerated. Areas mentioned above are within Merit Principles, my employees are treated with respect and dignity at all times. We will continue to improve our Command Climate [REDACTED]

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE [REDACTED] OF [REDACTED] PAGES

STATEMENT OF [REDACTED]

TAKEN AT [REDACTED]

18 Aug 300 16 Buchanan PR

DATED 27 Sep 13

1731

9. STATEMENT (Continued)

Discussion classified material on a unclassified line  
None

Unauthorized GPC Purchase for Gazebo -  
Received verbal authorization from [REDACTED] to purchase materials for Gazebo with the intent to construct project myself during personal time (weekend). On 29 Aug 13, [REDACTED] conveys purchases for furniture buys is not authorized. On 30 Aug 13, NEC GPC Holder relays an email depicting [REDACTED] is referring to furniture purchase and we are not purchasing furniture. On 17 Sep 13, email is relayed to [REDACTED] requesting to proceed with approval process to purchase additional items for Gazebo. 18 Sep 13, [REDACTED] conveys a gazebo is classified as furniture and request cannot be granted. On/about 27 Sep 13, we coordinate with Home Depot leadership, all materials are returned to HD with no issue.

Discussion terms for upcoming contract requesting six additional employees to work outside/inside plant.  
Contract under discussion with COR, KO, and PM goal is to amend mod 14 (W91RUS-08-D-0004-0003) per FY14 TDA Rebalancing (dated 4 JAN 13) 7th Signal Command (T).  
Telephone Operators replaced by ADAS.  
Tech Control Facilitators and Technical Aids are not required within NEC Operations Center due to hours of operation reduction. Operational necessity is not required beyond 1800 and Sundays/Holidays, hours have been reduced from 24/7 to 0600-1800 M-S.

Currently CME's are executing IT infrastructure O&M on 20% throughout Fort Buchanan, current CME workforce must be increased in order to sustain communications demand for all customers traversing their services within the island of Puerto Rico.  
Mod 15 will enhance performance ratios within our IT Infrastructure and save 7th Signal Command over \$312K annually in contractual expenses and totally eliminate Night Differential pay for all DAC employees.

AFFADAVIT

[REDACTED] HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 3 OF 3 PAGES

TAB 6

**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is PMG.

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

**PRINCIPAL PURPOSE:** To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

**ROUTINE USES:** Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

**DISCLOSURE:** Disclosure of your SSN and other information is voluntary.

1. LOCATION Fort Buchanan, PR	2. DATE (YYYYMMDD) 2014/03/07	3. TIME 1403	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS GS14	
8. ORGANIZATION OR ADDRESS Bldg 527 S. Terminal Road; Fort Buchanan, PR 00934			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Questions about Government Vehicles usage.  
 Who in the NEC is responsible for managing the government vehicles?  
 Business Division Chief ([REDACTED] & [REDACTED]) delegated to personnel listed below:  
 FY 11 [REDACTED] (Retired)  
 FY 12 [REDACTED] "  
 FY 13 [REDACTED] "  
 FY 14 [REDACTED] will be replaced by [REDACTED] on 24 Mar 14

How many vehicles does the NEC have?  
 FY 11- one electric LSEV & one pick-up truck  
 FY 12- one electric LSEV & one pick-up truck  
 FY 13- one electric LSEV & one pick-up truck - the LSEV was replaced for a Ford Focus requested by [REDACTED] approved through 106th Signal Brigade paid with WBS.0018237.2.4.1. [REDACTED] Bde RM, is the POC who funds the account [REDACTED] This adjustment saved our organization several thousands of dollars annually.  
 FY 14 (one sedan & one pick-up truck)

How are they assigned to the staff? Managed by Business Division.

What is the primary purpose for the vehicles?  
 The determination as to whether a particular use is for official purposes is a matter of administrative discretion to be exercised within applicable law and regulations. In making such a determination, consideration shall be given to all pertinent factors, including whether the transportation is the following: Essential to the successful completion of a DoD function, activity, or operation, and consistent with the purpose for which the motor vehicle was acquired.

What employees, by name and section, complete that type of work?  
 [REDACTED] Business Division; [REDACTED] Business Division; [REDACTED] Office Manager; [REDACTED] - Operations Center; [REDACTED] - Business Division; [REDACTED] Business Division; [REDACTED] IA Division; [REDACTED] - IA Division; [REDACTED] IA Division; [REDACTED] Operations Center; [REDACTED] - GC&E

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED]"  
 THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF [REDACTED] TAKEN AT Fort Buchanan, PR DATED 2014/03/07

9. STATEMENT (Continued)

Are personnel required to use their privately owned vehicles to perform their official duties? Is so, under what circumstances?

Not under my consent. On numerous occasions I've publically stated our GOV's are to be used when moving IT equipment (e.g. SSA, DRMO, facilities with NEC owned equipment, etc...). At no point has anyone conveyed to me they're being directed to use their POV's while performing assigned task/duties.

Items/Awards presented to Contractors.

Did you present awards to contractors on or about 25 June 2013?

Don't recall the exact date however items were purchased by GC&E leadership, during the announcement while alongside GC&E leadership I stated "this award is presented on behalf of GC&E".

Did you present an item or award to contractors on or about 6 September 2013?

Don't recall the exact date however items were purchased by GC&E leadership, during the announcement while alongside GC&E leadership I stated "this award is presented on behalf of GC&E".

(The following questions apply to both events)

What was the presented item/award?

The items were gift cards and others were cash handouts (e.g. Dec 2013 GC&E Holiday gathering), all were funded/provided by GC&E. Cash handouts never exchanged hands between GC&E and L.

What was the purpose for the presentation of the award?  
Determined by GC&E (longevity, performance, etc...).

Who provided the award or the funding for the awards?  
GC&E

Was any government funding used for the item/awards?  
No

Is there an established award program to award contractors?  
No

Is there an established award program to award DACs? See below:  
Performance Award (14 Feb 14)  
Army Safety Award proposal to Supervisors (21 Nov 13)  
Town Hall meetings piggy back with Garrison personnel (15 Aug 13)  
LOS award (01 May 13)

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE 2 OF 3 PAGES

STATEMENT (Continued)

Were an established award program to award DACs? (cont.)

Email below was transmitted to [REDACTED] (Deputy NEC Director) on 21 May 13.

Over the past several months we've witness several personnel receive recognition for their superior performance. Any reason why we have not submitted any of our superstars? Are we so busy that we're not able to take a knee/30 minutes and write about the accomplishments/performance/creativity/exuberance/attitude/self development/teamwork/educational enhancement/etc?

I've been here almost four months and can identify several TOP performers:

I'm sure all of you can identify countless accomplishments every Team member has accomplished this FY let alone the previous times each and every one of us has acknowledged their superior performance by stating "Thank you" or a pat on their shoulder as a gesture for their commitment to restoring the Network or finding the solution impacting every member tied to our network. The number of TT's resolved over the last 90 days and ICE comments depicting the superior customer service. Even the execution of IDIQ, copier forensics saving our main customer over \$50K annually, expediting CAFE 151 install, 1300 and 1301 deployment, and finally the hundreds of items we have identified on our property books.

Let's do the right thing for our people and get them recognized.

Get a copy of the requirements and next window of opportunity, relay message to every member within the NEC that they have the ability to nominate their Teammates/peers as well.

Who was invited / attended the events?

Depends on type of event (e.g. Garrison Town Hall DACs; local NEC event DAC's/CME's).

Were DACs awarded at the events?

Depends on type of event and applicable to individual who met the purpose of awards (e.g. LOS...).

AFFIDAVIT

I, [REDACTED] [REDACTED] HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED] (Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_

ORGANIZATION OR ADDRESS

[REDACTED] (Signature of Person Administering Oath)

[REDACTED] (Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED] (Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

TAB 13

[Redacted]

m:  
t:

[Redacted]

Saturday, November 16, 2013 5:02 AM

[Redacted]

**Subject:** Fw: OPERATIONS ORDER 201411-105, Call for Nominations for the 2013-2014 Adjutant General's Corps Regimental Officer, Warrant Officer, Noncommissioned Officer, Soldier and Civilian of the Year (UNCLASSIFIED)

**Attachments:** Link to OPORD 201411-105.docx

Gents,

NLT 20 Nov 13 need to know if the following individuals are great candidates for this award:

[Redacted]

[Redacted]

----- Original Message -----

**From:** [Redacted]

**Sent:** Friday, November 15, 2013 06:42 PM

[Large redacted area]

Subject: OPERATIONS ORDER 201411-105, Call for Nominations for the 2013-2014 Adjutant General's Corps Regimental Officer, Warrant Officer, Noncommissioned Officer, Soldier and Civilian of the Year (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: FOUO

ON,

REF: OPERATIONS ORDER 201411-10S, Call for Nominations for the 2013-2014 Adjutant General's Corps Regimental Officer, Warrant Officer, Noncommissioned Officer, Soldier and Civilian of the Year

: NLT 06 January 2014, 106th Signal Brigade Staff and NECs will submit nominations for consideration. Negative responses are required

EXSUM: In honor of [REDACTED], Army G-1 SGM, both killed in action on 11 September 2001, the Adjutant General's Corps (AGC) implemented an awards program to formally recognize our Regimental Officer, Warrant Officer, Noncommissioned Officer, and Soldier of the Year, in addition to the Civilian of the Year implemented in 2001 to honor Mr. John Dinnien. The AGC is seeking qualified nominations to recognize deserving Soldiers and Civilians from each AGC Regimental category for the period 31 May 2013 through 30 May 2014.

106th Signal Brigade NECs will support this request for nominees for the AG Corp Regimental Officer, Warrant Officer, Noncommissioned Officer, Soldier, and Civilian of the year.

SUS: NLT 06 January 2014

POC: [REDACTED]

ADD INFO: All units and staff sections will acknowledge receipt of this Order within 24 hours of receipt via electronic mail to the 106th Signal Brigade Operations Center at [REDACTED]

[REDACTED]  
106 Signal Brigade  
Operation Center  
Fort Sam Houston, TX 78234  
[REDACTED]

[REDACTED]  
"Gateway to the Enterprise"

Classification: UNCLASSIFIED  
Caveats: FOUO

NEE Journal  
McClintock

TAB B

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

The use of bad language at the common areas in building 527 is unacceptable. In more than one occasion I have cancelled telephone conversations because some personnel are using this type of foul language and it could be heard by the person at the other end.

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

Remind personnel that we have to keep certain level professionalism in our office environment.

TAB B

[REDACTED]

To: [REDACTED]  
 Wednesday, February 05, 2014 7:22 PM  
 From: [REDACTED]  
 Subject: FW: Dignity and Respect at the Workplace (UNCLASSIFIED)  
 Signed By: [REDACTED]  
 Importance: High  
 Tracking: Recipient [REDACTED] Delivery [REDACTED]  
 Delivered: 2/5/2014 7:22 PM

Classification: UNCLASSIFIED  
 Caveats: FOUO

[REDACTED]

You never submitted your statement ref abusive behavior at the work place, provide written statement NLT tomorrow (06 Feb 14) prior to 1500.

V/r

Thank you, [REDACTED]  
 Director, Fort Buchanan  
 [REDACTED]

----- Original [REDACTED]

Sent: Thursday, August 08, 2013 06:48 PM  
 To: [REDACTED]  
 Subject: Dignity and Respect at the Workplace

[REDACTED]

Over the past few days multiple employees have verbally reported complaints ref you using abusive comments directly at employees in public form.

Several employees herd and witnessed you address [REDACTED] stating the following:

"I'm not a Fuc.....-ng Secretary you need to....."

elling and screaming in the main corridor ref Contractors taking time without coordination.

Several employees reported this behavior occurs during my Furlough days

in order for me not to hear how employees are treated at their workplace.

Correcting contractors in public without addressing the issue through our  
who would address the issue to Contract Supervisor.

Need you to submit a statement ref complaints above, if true, you are to  
immediately halt this abusive behavior towards our employees.

See me Tuesday morning at 0830.

V/r

  
Fort Buchanan  
NEC Director

Classification: UNCLASSIFIED  
Caveats: FOUO

TAB  
E

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

COMMUNICAT - COMMUNICATION PROCESS:

I personally think that the information in the NEC is NOT getting a head on time or NOT ALL TO ITS CORRESPONDING SUBORDINATES  
I feel if we had a team structure, all persons involved should be notified, NOT leave it for last minute or have too tasking through third persons. (I have seen this in FINOS)

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

All staff should be informed & pass the information on tasking to its subordinates as soon as they get it, also feedback is important in this process. This will solve a lot of issues in the NEC & tasking will be performed professionally & not out of order.

# RECOMMENDATIONS

First, I am very pleased with the changes I have seen in the past months within our organization. The double standard between the way employees were treated among Divisions has lowered, still more work to be done, but it has been a noticeable difference, for the good.

I recommend we have more frequent Hall meetings, and that we also have a Director sit down at least every quarter without supervisors. I also recommend that Chiefs have at least, biweekly meetings with their subordinates.

A supervisory training for the Chiefs, lead employees, is recommended as well. There is a concept of "because I said so" or "because that's the way it is" is not an answer to employees that come with concerns and need guidance. We expect more from our leaders, this is one of the problems we encounter that brings morale down. It is hard to bring up issues when from the get go you get a no or no answer at all after a reasonable amount of time.

Written instructions in order to keep accountability of tasks are also a recommendation. The reason after this request is that sometimes the scenarios change, which we can be accustomed to that within the organization we are in. However, the "I did not give you those instructions" or "I never said that" is a disrespectful way of calling an employee, or a supervisor a liar. It disrupts cohesion within the team. To keep things clear, I suggest both documents at least in an e-mail when VOCO instructions have been given and send to the Supervisor. The responsibility of the operations of the organization has to be both ways, from management and from subordinates.

There are many other things I would address, (noise in the hallway for instance) however, this opportunity is for organization recommendations. I will ask for an open door, when the time is right, if I feel I need to express any additional concerns.

TASC

# RECOMMENDATIONS

1. Problem: People do not know or break the process rules constantly and a lot of times deters from completing a process correctly because lack of accountability, the process is not cleared or being the process is being overruled.

We need to review our processes and establish a Process Management System where anybody from our department or any entity can review and understand our ways of doing business. With this, we need to empower and establish accountability among our personnel to keep and maintain our established processes. This system should be aligned with our personnel's job description.

2. Problem: We do not have a well established inventory controls. People do not know the whereabouts of inventory and equipments.

We need to establish an Asset Management System where we can track any piece of hardware among the base and align it with our Configuration Management processes. We can do something similar with our Software's aligned this system.

Note: I know this is something you might had already recognized, but I wanted to help by letting you know that this is something I see every day here and if I could be of any help just let me know.

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

I would increase collaboration efforts ~~and~~ by <sup>with regard to OPORA</sup> establishing a centralized <sup>NEC</sup> listings to be maintained by the Director's Admin. Assistant. Said list should include assignee, suspense date(s) and link to the opora. It should also include an area to mark status (red/yellow/green) and post brief status updates. While a web-based (e.g. Sharepoint) solution would be nice, it could also be accomplished via shared excel workbook (e.g. posted in Git Drive).

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

See Above

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

Submission of Monthly Shift schedule.  
They are being sent out on the last  
few days prior to the new monthly  
schedule.

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

Monthly Shift schedules should be  
sent out to the employees at least  
a month in advance. I believe there  
is a reg to that effect.

## ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

- Define roles for each position
- Overlapping tasks in Tech control / LAN support
- No relatives/friends should be hired in NEC unless they have the qualifications.

## HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

- Define roles for Tech control and LAN support.
- Making sure there will always be a LAN support technician in his area during the day.
- Train Tech controllers in the LAN support area.
- Train LAN support in the Tech control area.
- Only qualified candidates should be hired.

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

Hiring Process, Promotions Equal  
Opportunity, Chain of Command

Bldg 376 Breakroom, Bathrooms, new chairs  
Equipment life cycle, work schedules  
Cross training, career development

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

\* Army Values \*, Clear Process,  
Equal opportunity training, Team player

ONE THING I WOULD CHANGE IS: / *UNA COSA QUE YO CAMBIARÍA ES:*

Once upon a time, GS-12's at NEC in Fort Buchanan were giving Supervisor duties. Personnel with not experience, training, or aptitude should not be placed in that role. It was a total fiasco.

HOW WOULD I DO IT? / *¿CÓMO LO HARÍA?*

If someone says it is a good idea, it is not true. It will be a total fiasco as it was once.

ONE THING I WOULD CHANGE IS: / UNA COSA QUE YO CAMBIARÍA ES:

① Manera de supervisar al empleado.

HOW WOULD I DO IT? / ¿CÓMO LO HARÍA?

① Supervisar al empleado de manera eficaz en las tareas o trabajos asignados al puesto que ocupa equitativamente y no discriminatoria, en la cual redunde en su mejoramiento profesional. Aplicar medidas correctivas, si aplicará, para mejorar el servicio al cliente, el cual es el propósito principal en la cual fuimos seleccionados.

1502

[Redacted]

m: [Redacted]  
Subject: RE: CME Tardiness 3rd Occurrence

Is it [Redacted] We are handling ASAP. I will have to suspend before I can terminate. Just an FYI.

Thank You,

[Redacted]  
President  
GC&E Systems Group, Inc.  
5835 Peachtree Corners East, Suite A  
Norcross, GA 30092  
[Redacted]

CONFIDENTIALITY NOTICE: The information contained in this email message is legally privileged and confidential. It is intended only for the use of the addressee. If you are not the intended recipient, please be aware that any dissemination, distribution or copy of this email is prohibited. If you have received this email in error, please immediately notify me by reply email and delete this message and any attachments.

--Original Message-----

m: [Redacted]  
Sent: Wednesday, January 15, 2014 7:58 AM  
To: [Redacted]  
Subject: CME Tardiness 3rd Occurrence

[Redacted]

Please take immediate action, employee continues to arrive tardy at workplace, [Redacted] can provide name of employee.

Contractor continues to arrive tardy at their designated work place, request immediate removal.

[Redacted]

----- Original [Redacted] -----

Sent: Tuesday, January 14, 2014 09:42 AM  
To: [Redacted]  
Cc: [Redacted] BDE (US)  
Subject: RE: Future Organization (UNCLASSIFIED)

OK, thanks for the info.

[Redacted] and [Redacted] why can't our people stay off the radar and just do their jobs?

Thank You,

[Redacted]

President  
GC&E Systems Group, Inc.  
35 Peachtree Corners East, Suite A

[REDACTED]

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-----Original [REDACTED]

[REDACTED]

Sent: Tuesday, January 14, 2014 8:42 AM  
To: [REDACTED]  
Subject: RE: Future Organization (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: FOUO

[REDACTED]

No additional info outside of what we discussed in the past. Heads-up! Conversated with [REDACTED] and COR this morning ref several CME's reporting late to their designated areas. [REDACTED] can provide the details.

Thank you, Mr. [REDACTED]  
NEC Director, Fort Buchanan

-----Original [REDACTED]

[REDACTED]

Sent: Tuesday, January 14, 2014 9:34 AM  
To: [REDACTED]  
Subject: Future Organization

[REDACTED] is there anything else from me you need for the future organization pricing or planning?

Thank You,

[REDACTED]  
resident

.E Systems Group, Inc.

5835 Peachtree Corners East, Suite A

Norcross, GA 30092  
[REDACTED]  
[REDACTED]

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Classification: UNCLASSIFIED

Caveats: FOUO  
[REDACTED]

TRO R



QUOTE

Store 6401 BAYAMON  
725 W MAIN AVE, STE 860  
BAYAMON, PR 00961

Phone: [REDACTED]  
Salesperson JMCAB5  
Reviewer:

SOLD TO	Name	[REDACTED]	Home Phone	[REDACTED]
	Address	1002 BUILDING	Work Phone	[REDACTED]
			Company Name	
	City	FORT BUCHANAN	Job Description	QUOTE
	State	PR	Zip	00934
		County	BAYAMON	

QUOTE

2013-08-14 16:38

Prices Valid Thru: 08/21/2013

HOME DEPOT DELIVERY #1

MERCHANDISE AND SERVICE SUMMARY

We reserve the right to limit the quantities of merchandise sold to customers.

REF # V04

STOCK MERCHANDISE TO BE DELIVERED:

REF #	SKU	QTY	UM	DESCRIPTION	PI	TAX	PRICE EACH	EXTENSION
R01	0000-129-163	26.00	EA	6X6-10FT #2 PT /	A		\$45.97	\$1,195.22
R02	0000-219-417	33.00	EA	2X10-12 PT #1 /	A	N	\$29.97	\$989.01
R03	0000-260-430	6.00	EA	4X6-12FT #2 PT /	A	N	\$36.97	\$221.82
							<b>MERCHANDISE TOTAL:</b>	<b>\$2,406.05</b>

DELIVERY INFORMATION:

SCHEDULED DELIVERY DATE: Will be scheduled upon arrival of all S/O Merchandise

V04	0000-515-663	1.00	EA	Curbside Delivery		Y	\$79.00	\$79.00
							<b>DELIVERY SERVICE SUBTOTAL:</b>	<b>\$79.00</b>

THE PCC WILL DELIVER MDSE TO:

ADDRESS: 1002 BUILDING

CITY: FORT BUCHANAN

STATE: PR

ZIP: 00934

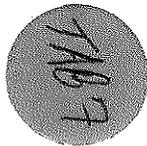
COUNTY: BAYAMON

SALES TAX RATE:

7.000

PHONE: [REDACTED]

ALTERNATE PHONE: [REDACTED]



NOT VALID FOR MERCHANDISE

Handwritten notes and signatures

<b>HOME DEPOT DELIVERY #1</b> (Continued)		REF #V04	
		<b>HOME &amp; DELIVERY TOTALS:</b>	\$2,485.05
<b>DRIVER SPECIAL INSTRUCTIONS:</b>		END OF HOME DEPOT DELIVERY - REF #V04	

<b>TOTAL CHARGES OF ALL MERCHANDISE &amp; SERVICES</b>									
Policy Id (PI): A: 90 DAYS DEFAULT POLICY.....	<table border="1"> <tr> <td><b>ORDER TOTAL</b></td> <td>\$2,485.05</td> </tr> <tr> <td><b>SALES TAX</b></td> <td>\$5.53</td> </tr> <tr> <td><b>TOTAL</b></td> <td>\$2,490.58</td> </tr> <tr> <td><b>BALANCE DUE</b></td> <td>\$2,490.58</td> </tr> </table>	<b>ORDER TOTAL</b>	\$2,485.05	<b>SALES TAX</b>	\$5.53	<b>TOTAL</b>	\$2,490.58	<b>BALANCE DUE</b>	\$2,490.58
<b>ORDER TOTAL</b>	\$2,485.05								
<b>SALES TAX</b>	\$5.53								
<b>TOTAL</b>	\$2,490.58								
<b>BALANCE DUE</b>	\$2,490.58								
<i>The Home Depot reserves the right to limit / deny returns. Please see the return policy sign in stores for details.</i>									
END OF ORDER No. 6401-263700									

**QUOTE**

Store 6401 BAYAMON  
725 W MAIN AVE, STE 860  
BAYAMON, PR 00961

Phone [REDACTED]  
Salesperson: JMCAB5  
Reviewer:

<b>SOLD TO</b>	Name	[REDACTED]		Home Phone	[REDACTED]
	Address	1002 BUILDING		Work Phone	[REDACTED]
		Company Name			
	City	FORT BUCHANAN		Job Description	QUOTE
	State	PR	Zip	00934	County

**QUOTE**

2013-08-14 17:00

Prices Valid Thru: 08/21/2013

<b>HOME DEPOT DELIVERY #1</b>		<b>MERCHANDISE AND SERVICE SUMMARY</b>			We reserve the right to limit the quantities of merchandise sold to customers			
		REF # V28						
<b>STOCK MERCHANDISE TO BE DELIVERED:</b>								
REF #	SKU	QTY	UM	DESCRIPTION	PI	TAX	PRICE EACH	EXTENSION
R01	0000-868-926	1.00	EA	MAKITA 7-1/4" 15A MAGNESIUM CIRC SAW /	A	N	\$159.00	\$159.00
R02	0000-435-246	4.00	EA	AVANTI 7-1/4"X24T FRAMING SAW BLADE /	A	N	\$5.47	\$21.88
R03	0000-446-334	1.00	EA	RYOBI MITER SAW STAND /	A	N	\$109.97	\$109.97
R04	0000-754-455	1.00	EA	RYOBI 10" 13A SLIDE MITER SAW W/LASR /	A	N	\$218.00	\$218.00
R05	0000-657-810	3.00	EA	STABILIZER KNEE PAD /	A	N	\$43.97	\$131.91
R06	0000-408-401	2.00	EA	MCGUIRE-NICHOLAS CARPENTER APRON /	A	N	\$27.49	\$54.98
R07	0000-622-602	2.00	EA	DEWALT 14OZ MIG HAMMER /	A	N	\$43.97	\$87.94
R08	0000-800-140	2.00	EA	WISS 11-1/2" COMPOUND-ACTION SNIPS /	A	N	\$16.77	\$33.54
R09	0000-374-950	2.00	EA	16IN X 24IN ALUM. CARPENTER SQUARE /	A	N	\$11.95	\$23.90
R10	0000-117-350	1.00	EA	IRWIN 100' CHALK & REEL W/LEVEL /	A	N	\$8.76	\$8.76
R11	0000-558-220	10.00	PT	GRIP BOND 4 PTS /	A	N	\$5.48	\$54.80
R12	0000-630-630	15.00	EA	10" MENDING PLATE ZINC /	A	N	\$3.20	\$48.00
R13	0000-243-086	104.00	EA	16" CORNER BRACE ZINC /	A	N	\$4.34	\$451.36
							*** CONTINUED ON NEXT PAGE ***	

**NOT VALID**

HOME DEPOT DELIVERY #1										
(Continued)										
REF #V28										
R14	1000-001-040	5.00	EA	DEWALT #3 2" PHILLIPS PWR BITS 2PK /	A	N	\$3.27	\$16.35		
R15	0000-219-417	1.00	EA	2X10-12 PT #1 /	A	N	\$29.97	\$29.97		
R16	0000-571-206	1.00	EA	HUSKY 25' TAPE MEASURE /	A	N	\$15.37	\$15.37		
R17	0000-376-892	1.00	EA	JOHNSON 12" PLSTC HEAD COMBO SQUARE /	A	N	\$6.56	\$6.56		
R18	0000-374-922	1.00	EA	9IN MAGNETIC PLASTIC TORPEDO LEVEL /	A	N	\$5.95	\$5.95		
R19	0000-391-379	1.00	EA	DEWALT FOLDING RETRACT UTILITY KNIFE /	A	N	\$10.47	\$10.47		
R20	0000-780-774	1.00	EA	10" NAIL CLAW /	A	N	\$8.77	\$8.77		
R21	0000-921-937	1.00	EA	24" SWIVEL LOCK300 CLAMP/SPREADER /	A	Y	\$27.47	\$27.47		
R22	0000-921-640	1.00	EA	6" SWIVEL LOCK300 CLAMP/SPREADER /	A	N	\$17.57	\$17.57		
R23	0000-645-067	1.00	EA	JOHNSON 7" PLASTIC RAFTER SQUARE /	A	N	\$4.37	\$4.37		
R24	0000-703-552	1.00	EA	E/O BULK CARPENTER PENCIL-HD /	A	N	\$0.24	\$0.24		
R25	0000-235-623	1.00	EA	VERSASHARP PENCIL/CRAYON SHARPENER /	A	N	\$2.48	\$2.48		
R26	0000-277-517	1.00	EA	16/3 50' WORKFORCE EXTENSION CORD /	A	N	\$12.98	\$12.98		
R27	0000-335-884	1.00	EA	6 OUTLET PWR STRIP 4' RT ANGLE /	A	N	\$5.46	\$5.46		
R29	0000-420-786	1.00	EA	16D HOT GALV COMMON 30 LB BUCKET /	A	N	\$45.00	\$45.00		
R30	0000-137-632	1.00	EA	3" PG 10 EXTERIOR SCREW 25LB BKT /	A	N	\$94.22	\$94.22		
R31	0000-690-342	1.00	EA	1" PLASTIC ROUND CAP 3M BUCKET /	A	Y	\$27.28	\$27.28		
R32	0000-376-116	2.00	EA	JOHNSON 48" ALUM TOP-READING LEVEL /	A	N	\$17.58	\$35.16		
								<b>MERCHANDISE TOTAL:</b>	<b>\$1,769.71</b>	
<b>DELIVERY INFORMATION:</b>			SCHEDULED DELIVERY DATE: Will be scheduled upon arrival of all S/O Merchandise							
V28	0000-515-663	1.00	EA	Curbside Delivery		N	\$79.00	\$79.00		
								<b>DELIVERY SERVICE SUBTOTAL:</b>	<b>\$79.00</b>	
<b>THE PCC WILL DELIVER MDSE TO:</b> [REDACTED]										
<b>ADDRESS:</b> 1002 BUILDING				<b>CITY:</b> FORT BUCHANAN						
<b>STATE:</b> PR		<b>ZIP:</b> 00934			<b>COUNTY:</b> BAYAMON			<b>SALES TAX RATE:</b> 7.000		
<b>PHONE:</b> [REDACTED]				<b>ALTERNATE PHONE:</b> [REDACTED]						

<b>HOME DEPOT DELIVERY #1</b> (Continued)		REF #V28
		<b>MERCHANDISE &amp; DELIVERY TOTALS:</b> \$1,848.71
<b>DRIVER SPECIAL INSTRUCTIONS:</b>	END OF HOME DEPOT DELIVERY - REF #V28	

<b>TOTAL CHARGES OF ALL MERCHANDISE &amp; SERVICES</b>									
Policy Id (PI): A: 90 DAYS DEFAULT POLICY.....;	<table border="1"> <tr> <td><b>ORDER TOTAL</b></td> <td>\$1,848.71</td> </tr> <tr> <td><b>SALES TAX</b></td> <td>\$3.83</td> </tr> <tr> <td><b>TOTAL</b></td> <td>\$1,852.54</td> </tr> <tr> <td><b>BALANCE DUE</b></td> <td>\$1,852.54</td> </tr> </table>	<b>ORDER TOTAL</b>	\$1,848.71	<b>SALES TAX</b>	\$3.83	<b>TOTAL</b>	\$1,852.54	<b>BALANCE DUE</b>	\$1,852.54
<b>ORDER TOTAL</b>	\$1,848.71								
<b>SALES TAX</b>	\$3.83								
<b>TOTAL</b>	\$1,852.54								
<b>BALANCE DUE</b>	\$1,852.54								
<i>The Home Depot reserves the right to limit / deny returns. Please see the return policy sign in stores for details.</i>									
END OF ORDER No. 6401-263705									

**QUOTE**

Store 6401 BAYAMON  
725 W MAIN AVE, STE 860  
BAYAMON, PR 00961

Phone: [REDACTED]  
Salesperson: JMCAB5  
Reviewer:

<b>SOLD TO</b>	Name	[REDACTED]	Work Phone	[REDACTED]
	Address	1002 BUILDING	Company Name	
	City	FORT BUCHANAN	Job Description	QUOTE
	State	PR	County	BAYAMON
	Fax	00934		

**QUOTE**

2013-08-14 16:25

Prices Valid Thru: 08/21/2013

**HOME DEPOT DELIVERY #1**

**MERCHANDISE AND SERVICE SUMMARY**

REF # V15

We reserve the right to limit the quantities of merchandise sold to customers

**STOCK MERCHANDISE TO BE DELIVERED:**

REF #	SKU	QTY	UM	DESCRIPTION	PI	TAX	PRICE EACH	EXTENSION
R01	0000-168-161	28.00	EA	2X4-12 PT #2 PRIME /	A	N	\$9.57	\$267.96
R02	0000-155-395	14.00	EA	1X4-8 PT APPEAR /	A	N	\$4.97	\$69.58
R03	0000-208-413	24.00	EA	LSU26Z 2"X6" 18GA ADJ JOIST HANGER /	A	N	\$7.71	\$185.04
R04	0000-246-918	24.00	EA	H10AZ 18GA ZMAX HURRICANE TIE /	A	N	\$3.60	\$86.40
R05	0000-387-473	12.00	RL	30# ASTM-D226 /	A	N	\$34.00	\$408.00
R06	0000-716-672	3.00	EA	VERANDA LATTICE - REDWOOD /	A	N	\$29.97	\$89.91
R07	0000-202-564	8.00	EA	10' GALVANIZED DRYWALL CORNER BEAD /	A	N	\$2.48	\$19.84
R08	0000-661-880	312.00	EA	HEX BOLT 3/8X1-1/2 /	A	N	\$0.26	\$81.12
R09	0000-941-966	312.00	EA	DROP-IN ANCHOR 3/8" SGL /	A	N	\$0.90	\$280.80
R10	0000-943-132	4.00	EA	BOSCH 1/2" MULTIPURPOSE DRILL BIT /	A	N	\$11.98	\$47.92
R11	0000-572-565	20.00	EA	48"X79" ONDURA ROOF PANEL - RED /	A	N	\$19.98	\$399.60
R12	0000-572-736	4.00	EA	12-1/2"X79" ONDURA RIDGE CAP-RED /	A	N	\$13.96	\$55.84
R13	0000-565-975	4.00	EA	3" BOXED NAIL W/WASHER-RED 100PK /	A	N	\$10.47	\$41.88

\*\*\* CONTINUED ON NEXT PAGE \*\*\*

**NOT VALID**

<b>HOME DEPOT DELIVERY #1</b>											
(Continued)											
REF #V15											
R14	0000-385-185	1.00	EA	10D CUT MASONRY 30 LB BUCKET /				A	N	\$68.17	\$68.17
<b>MERCHANDISE TOTAL:</b>										<b>\$2,102.06</b>	
<b>DELIVERY INFORMATION:</b>											
SCHEDULED DELIVERY DATE: Will be scheduled upon arrival of all S/O Merchandise											
V15	0000-515-663	1.00	EA	Curbside Delivery					Y	\$79.00	\$79.00
<b>DELIVERY SERVICE SUBTOTAL:</b>										<b>\$79.00</b>	
<b>THE PCC WILL DELIVER MDSE TO:</b> [REDACTED]											
<b>ADDRESS:</b> 1002 BUILDING					<b>CITY:</b> FORT BUCHANAN						
<b>STATE:</b> PR		<b>ZIP:</b> 00934		<b>COUNTY:</b> BAYAMON			<b>SALES TAX RATE:</b>		7.000		
<b>PHONE:</b> [REDACTED]			<b>ALTERNATE PHONE:</b> [REDACTED]								
<b>MDSE &amp; DELIVERY TOTALS:</b>										<b>\$2,181.06</b>	
<b>DRIVER SPECIAL INSTRUCTIONS:</b>											
<b>END OF HOME DEPOT DELIVERY - REF #V15</b>											

**TOTAL CHARGES OF ALL MERCHANDISE & SERVICES**

Policy Id (PI):	<b>ORDER TOTAL</b>	\$2,181.06
A: 90 DAYS DEFAULT POLICY.....	<b>SALES TAX</b>	\$5.53
	<b>TOTAL</b>	\$2,186.59
	<b>BALANCE DUE</b>	\$2,186.59
<p><i>'The Home Depot reserves the right to limit / deny returns. Please see the return policy sign in stores for details.'</i></p>		
<b>END OF ORDER No. 6401-263702</b>		

[REDACTED]

---

From: [REDACTED]  
Sent: Friday, August 30, 2013 9:22 AM  
To: [REDACTED] 106 SIG  
Subject: BDE (US)  
Re: Gazebo construction materials (UNCLASSIFIED)

[REDACTED]

Excellent follow-up. Appreciate you taking charge ref providing clarity and closure.

Thank you, [REDACTED]

[REDACTED]

---

Sent: Friday, August 30, 2013 09:15 AM  
To: [REDACTED]  
Subject: FW: Gazebo construction materials disapproved (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: FOUO

[REDACTED]

Please disregard e-mail from [REDACTED] is referring to furnisher purchase and we are not purchasing furnishers. How [REDACTED] got involved in this I don't know, but she should of consulted with me prior to forwarding this e-mail to you. [REDACTED] also wanted to know if you had authorized this purchase, the PR is already approved, All I have to do now is purchase the wood.

[REDACTED]

Administrative Specialist  
Network Enterprise Center  
[REDACTED]

[REDACTED]

---

Sent: Friday, August 30, 2013 7:17 AM  
To: [REDACTED]  
Cc: [REDACTED]  
(US)  
Subject: Gazebo construction materials disapproved (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: FOUO

Good morning Sir,

For your information.

R  
[REDACTED]

1

TAB8

Sent: Thursday, August 29, 2013 6:03 PM

To: [REDACTED]

(US)

Subject: RE: Approval Required for PR: 2100266252 ( L4 ) (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: FOUO

As of this time, purchases for furniture buys is not authorized. Did [REDACTED] approve this purchase?

V/R,

[REDACTED]  
Budget Analyst  
106th Signal Brigade/RM  
Ft Sam Houston, TX 78234  
[REDACTED]

-----Original Message-----

From [REDACTED]

Sent: Thursday, August 29, 2013 1:42 PM

To: [REDACTED]

Subject: Approval Required for PR: 2100266252 ( L4 )

PR Creator: [REDACTED]

Workflow Creation Date: 20130829

Document Type: PS AXOL 2-Way Single PR

Header Text:

Purchase of material for the construction of a gazebo at bldg 527

Line Item: 00001

Short Text: 6x6-10FT #2PT

Material Group: 26RB

Fund Center: AA3HJ

Fund: 208010D13

Functional Area: 131R50QOIM

WBS: S.0002902.21.01.02

GPC Cardholder: [REDACTED]

GPC Merchant/Description: THE HOME DEPOT

Classification: UNCLASSIFIED

Caveats: FOUO

Classification: UNCLASSIFIED  
Caveats: FOUO

Classification: UNCLASSIFIED  
Caveats: FOUO

**SPECIAL SERVICES CUSTOMER INVOICE**

Store 6401 BAYAMON  
 725 W MAIN AVE, STE 860  
 BAYAMON, PR 00961

Phone: (787) 778-2590  
 Salesperson: NXR00P  
 Reviewer:

*Contratista*  
 [Redacted]

**VALIDATION AREA**

This is only a QUOTE for the merchandise and services printed below. This becomes an Agreement upon payment and an endorsement by a Home Depot register validation.

<b>SOLD TO</b>	Name	[Redacted]	Home Phone	[Redacted]
	Address	FORT BUCHANAN RD	Work Phone	[Redacted]
		BLDG 527 S TERMINAL	Company Name	
	City	FORT BUCHANAN	Job Description	DELIVERY
	State	PR	Zip	00934
		County	GUAYNABO	

QUOTE is valid for this date: 09/03/2013

**HOME DEPOT DELIVERY #1**

**MERCHANDISE AND SERVICE SUMMARY**

We reserve the right to limit the quantity of merchandise sold to customers.

REF # V04

**STOCK MERCHANDISE TO BE DELIVERED:**

REF #	SKU	QTY	UM	DESCRIPTION	TAX	PRICE EACH	EXTENSION
R01	0000-129-163	25.00	EA	6X6-10FT #2 PT /	A N	\$45.97	\$1,195.22
R02	0000-219-417	33.00	EA	2X10-12 PT #1 /	A N	\$29.97	\$989.01
R03	0000-260-430	6.00	EA	4X6-12FT #2 PT /	A N	\$36.97	\$221.82
<b>MERCHANDISE TOTAL:</b>							<b>\$2,406.05</b>

**DELIVERY INFORMATION:**

SCHEDULED DELIVERY DATE: Will be scheduled upon arrival of all S/O Merchandise

V04	0000-515-663	1.00	EA	Curbside Delivery	N	\$79.00	\$79.00
<b>DELIVERY SERVICE SUBTOTAL:</b>							<b>\$79.00</b>

THE PCC WILL DELIVER MDSE TO: [Redacted]

ADDRESS: FORT BUCHANAN RD  
 BLDG 527 S TERMINAL

CITY: FORT BUCHANAN

\*\*\* CONTINUED ON NEXT PAGE \*\*\*



Check your current order status online at  
[www.homedepot.com/orderstatus](http://www.homedepot.com/orderstatus)

NOT VALID FOR MERCHANDISE DELIVERY-DUT



(9901) 0100279437

<b>HOME DEPOT DELIVERY #1</b>			
(Continued)		REF #V04	
STATE: PR	ZIP: 00934	COUNTY: GUAYNABO	SALES TAX RATE: 7.000
PHONE: [REDACTED]	ALTERNATE PHONE: [REDACTED]		
<b>ORDER &amp; DELIVERY TOTALS:</b>			<b>\$2,485.05</b>
DRIVER SPECIAL INSTRUCTIONS: entregar antes de las 11:00 a.m.		END OF HOME DEPOT DELIVERY - REF #V04	

<b>TOTAL CHARGES OF ALL MERCHANDISE &amp; SERVICES</b>	
Policy Id (PI):	<b>ORDER TOTAL</b> \$2,485.05
A: 90 DAYS DEFAULT POLICY.....;	<b>SALES TAX</b> \$0.00
	<b>TOTAL</b> \$2,485.05
	<b>BALANCE DUE</b> \$2,485.05
<p><i>'The Home Depot reserves the right to limit / deny returns. Please see the return policy sign in stores for details.'</i></p>	
END OF ORDER No. 6401-264726	

6401-264726

Ally471a

HOME DEPOT, INC.  
DELIVERY CONFIRMATION

PAGE: 1  
DATE: 09/06/2013  
TIME: 07:18

STORE: 6401 BAYAMON  
P-LOC: 6401

6401-0026486-00-00-00----- DELIVERY NUMBER 6401-264726V04

Customer : [REDACTED] Delivery Date: 09/06/2013 Time : AM  
Phone : (787) 707-3010 Work : [REDACTED] Ext

Contact : [REDACTED] Phone : [REDACTED] Ext  
Company : [REDACTED] Alt Phone: [REDACTED] Ext

Site : FORT BUCHANAN RD  
BLDG 527 S TERMINAL  
FORT BUCHANAN, PR 00934  
Pager : [REDACTED]

Cross St1: Cross St2:  
Site Type: Existing building Lot # :

Reference: DELIVERY

Unusual Site Conditions:  
favor de entregar antes de las once am

Directions:  
entregar antes d las once

Special Instructions:  
entregar antes de las 11:00 a.m

UNATTENDED DROP: Unauthorized

Curbside Deliveries Only: You are purchasing merchandise that has been designated by Home Depot for curbside delivery only. Your purchase does not include delivery beyond curbside, on-premise or in-house (Additional Services) or the installation/hook-up of merchandise (Non-included Installation Services), and Home Depot has not authorized its Home Depot Delivery Agent (Delivery Agent) to perform such Additional services or Non-included Installation services. In the event you request, and Delivery agent agrees to perform, Additional Services and/or Non-included Installation Services, YOU ASSUME THE RISK OF AND FULL LIABILITY FOR, ANY RESULTING PERSONAL INJURY, DAMAGE TO PROPERTY, OR DAMAGE TO MERCHANDISE. Also, any Non-included Installation Services shall void any express or implied warranty provided by the Home Depot and may void the manufacturer's warranty on the merchandise so installed. By signing below, you acknowledge that you have read and fully understand the terms of this waiver and release, and you intend it to be a complete and unconditional release of all liability in regard to any requested Additional Services and/or Non-included Installation Services.

ACCEPTED BY: SIGNATURE ON FILE 09/03/2013  
CUSTOMER'S SIGNATURE DATE

CUSTOMER COPY

6401 264726

nlr471a

HOME DEPOT, INC.  
DELIVERY CONFIRMATION

PAGE: 2  
DATE: 09/06/2013  
TIME: 07:18

STORE: 6401 BAYAMON  
F LOC: 6401

6401-0026486 00-00-00----- DELIVERY NUMBER 6401-264726V04

REF #	SKU	ITEM DESCRIPTION	QUANTITY	
			ORDERED	DELIVERED
R01	0000-129-163	6X6-10FT #2 PT	26.00	26.00
R02	0000-219-417	2X10-12 PT #1	33.00	33.00
R03	0000-260-430	4X6-12FT #2 PT	6.00	6.00
704		Cardinal Curbside De		

WAS THERE ANY DAMAGE TO PROPERTY OR PRODUCT? (Circle One) Yes No

IF YES, PLEASE CLARIFY:

I HEREBY ACKNOWLEDGE RECEIPT OF THE ABOVE ITEMS IN THE QUANTITIES SHOWN IN THE "DELIVERED" COLUMN ABOVE:

CUSTOMER'S NAME (PLEASE PRINT)

CUSTOMER'S SIGNATURE

DRIVER'S SIGNATURE

6401-0026486-00-00-00----- END OF DELIVERY NUMBER 6401-264726V04

CUSTOMER COPY



# SPECIAL SERVICES CHANGE ORDER

Store 6401 BAYAMON  
725 W MAIN AVE, STE 860  
BAYAMON, PR 00961

Phone [REDACTED]  
Salesperson: NXROOP  
Reviewer:

## CHANGE ORDER

<b>SOLD TO</b>	Name	[REDACTED]		Home Phone	[REDACTED]
	Address	FORT BUCHANAN RD		Work Phone	[REDACTED]
		BLDG 527 S TERMINAL		Company Name	
	City	FORT BUCHANAN		Job Description	DELIVERY
	State	PR	Zip	00934	County

REVISION: 1, 10/15/2013

<b>DESCRIPTION OF CHANGES</b>	<b>SUMMARY OF CHANGES</b>	We reserve the right to limit the quantities of merchandise sold to customers.
	se abre orden para hacer un jobsite pickup ya q el proyecto lo cancelaron, así por íce	

### ADDITIONAL SERVICES

<b>HOME DEPOT DELIVERY</b>	REF #V06						
<b>STOCK MERCHANDISE TO BE DELIVERED:</b>							
REF #	SKU	QTY	UM	DESCRIPTION	TAX	PRICE EACH	EXTENSION
V06	0000-515-663	1.00	EA	DELIVERY	N	\$79.00	\$79.00
						<b>MERCHANDISE TOTAL:</b>	\$0.01
<b>DELIVERY INFORMATION:</b>							
V06	0000-515-663	1.00	EA	DELIVERY	N	\$79.00	\$79.00
						<b>DELIVERY SERVICE SUBTOTAL:</b>	\$79.00
<b>PCC WILL DELIVER MDSE TO:</b>		[REDACTED]					
<b>ADDRESS:</b> FORT BUCHANAN RD, BLDG 527 S [REDACTED]				<b>CITY:</b> FORT BUCHANAN			
<b>STATE:</b> PR		<b>ZIP:</b> 00934		<b>COUNTY:</b> GUAYNABO		<b>SALES TAX RATE:</b> 7.000	
<b>PHONE:</b> [REDACTED]		<b>ALTERNATE PHONE:</b> [REDACTED]		<b>PAGER:</b> [REDACTED]			
						<b>MDSE &amp; DELIVERY TOTALS:</b>	\$79.01
						<b>END OF HOME DEPOT DELIVERY - REF #V06</b>	

**SUMMARY OF ORDER CHARGES**

By signing below, the Customer accepts the prices, specifications and all other terms and conditions of this Change Order and the Customer agrees that all of the terms and conditions in the Customer Agreement (order #264726) remain in effect unless superceded by this Change Order.

CUSTOMER SIGNATURE:

DATE:

PREVIOUS ORDER TOTAL (pre-tax)	\$2,430.73
<b>NET CHANGE AMT</b>	\$79.01
REVISED ORDER TOTAL (pre-tax)	\$2,509.74
REVISED SALES TAX	\$0.00
REVISED TOTAL	\$2,509.74
AMOUNT PAID	\$2,430.73
BALANCE DUE	\$79.01

END OF ORDER No. 6401-264726



More saving.  
More doing.™

PREGUNTE. GARANTIAS EXTENDIDAS.  
GRACIAS POR COMPRAR EN THE HOME DEPOT.

6401 00022 31043 09/03/13 11:14 AM  
CASHIER [REDACTED] - KER922

ORDER ID: 6401-264726  
RECALL AMOUNT 2485.05  
---GSA Customer---  
2405.05 2.25 Percent Off -54.32  
MUST RETURN ALL ITEMS FOR A FULL REFUND

	SUBTOTAL	2,430.73
	MUNICIPAL TAX	0.00
	ESTATAL TAX	0.00
TAX EXEMPT		
	TOTAL	\$2,430.73
XXXXXXXXXXXX6257 VISA		2,430.73
AUTH CODE 033221/8213957		TA

P.O.#/JOB NAME. GAZEBO



6401 21 31043 09/03/2013 1:59  
THE HOME DEPOT RESERVES THE RIGHT TO  
LIMIT / DENY RETURNS. PLEASE SEE THE  
RETURN POLICY SIGN IN STORES FOR  
DETAILS.



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PREGUNTE. GARANTIAS EXTENDIDAS.  
GRACIAS POR COMPRAR EN THE HOME DEPOT.

6401 00022 19046 10/15/13 02:18 PM  
CASHIER [REDACTED] - KER922

ORDER ID: 6401-264726  
RECALL AMOUNT 79.01

	SUBTOTAL	79.01
	MUNICIPAL TAX	0.00
	ESTATAL TAX	0.00
TAX EXEMPT		
	TOTAL	\$79.01
XXXXXXXXXXXX6257 VISA		79.01
AUTH CODE 048943/6220130		TA

P.O.#/JOB NAME: DELIVERY



6401 22 19046 10/15/2013 2918

THE HOME DEPOT RESERVES THE RIGHT TO  
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DETAILS.

GUARANTEED LOW PRICES  
LOOK FOR HUNDREDS OF  
LOWER PRICES STOREWIDE  
Only unused generators may be returned  
with valid receipt of sale within 30  
days of purchase. If generator is used,  
sale is final.

¡PARTICIPE! ENTRE  
PARA LA OPORTUNIDAD  
DE GANAR 1 DE 5  
\$1000 TARJETAS DEL  
REGALO DE THD!

¡Su opinión cuenta! Nos gustaría  
escuchar sobre su experiencia de  
compra. Participe en una breve encuesta  
acerca de su visita en:

[www.homedepot.com/opinion](http://www.homedepot.com/opinion)

Necesitará lo siguiente para participar:

[REDACTED]  
[REDACTED]

---

From: [REDACTED]  
Sent: Friday, September 27, 2013 8:38 AM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Home Depot Purchase (UNCLASSIFIED)  
Signed By: [REDACTED]

Classification: UNCLASSIFIED  
Caveats: FOUO

[REDACTED]

Notify your Supervisor if they do not accept merchandise, Supervisor will schedule an appointment with HD leadership and explain what occurred. All HD items are banded and at no point was any item damaged or used.

V/r

Thank you, [REDACTED]  
NEC Director, Fort Buchanan

[REDACTED]

-----Original Message-----

From: [REDACTED]  
Sent: Friday, September 27, 2013 7:49 AM  
To: [REDACTED]  
Subject: Home Depot Purchase (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: FOUO

Sir,

I spoke with [REDACTED], RM from 106th Signal Brigade yesterday pertaining the purchase of material for the gazebo. Apparently the PR wasn't approve so I could not certify the GPC. He approved the PR and told me to try and return the material to Home Depot if they would accept it in order to receive credit on my GPC. I would try my best to return the material, but if they don't want to accept. What would you like me to do?

[REDACTED] [REDACTED]

TAB 10

Administrative Specialist

Network enterprise Center

[REDACTED]

Classification: UNCLASSIFIED

Caveats: FOUO

Classification: UNCLASSIFIED

Caveats: FOUO

[REDACTED]

---

From:  
Sent:  
To:  
Cc:

Subject: Re: Fort Buchanan NEC request Immediate Processing (UNCLASSIFIED)

[REDACTED]

We cannot use NAF monies to purchase materials for gazebo.

Rest assure at not point will I instruct any of my employees to assist with constructing a gazebo, fully aware of potential liabilities.

Appreciate you giving it your best attempt to support our request ref caring for NEC employees, no further support is needed.

Thanks again,  
[REDACTED]

----- Original Message -----

From: [REDACTED]  
Sent: Wednesday, September 18, 2013 03:05 PM  
To: [REDACTED] BDE (US)  
Subject: FW: Fort Buchanan NEC request Immediate Processing (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: FOUO

Greetings, [REDACTED] Construction of the requested gazebo is classified as a furniture request and can't be purchased using the current justification due to fiscal constraints. You mentioned that you were using NAF funding to support this requirement, but you also mentioned using OMAR funding. NAF funding should not require routing through our S8, but OMAR funding does of course.

A potential workaround you may be able to use is to get the Installation Safety Office to provide written justification of the need for covered protection from the elements (sun, rain, etc.) if no other authorized smoke areas are available. You may also want to have your existing break area evaluated to determine if minimum standards are met which would be a morale and welfare issue as pertinent. Upon receipt of any additional documentation, we will review and should be able to support your request.

I'm sure you are all over it, but please also mitigate the following concerns:

- conflicting interest for not getting appropriate bids for the work, and of course, the government cannot accept free service
- impact of augmenting your staff to perform work outside of their PD



- physical factors on PD for anyone performing the work from your NEC
- any legal implications
- potential injuries/workman's comp issues
- PPE requirements

I know this isn't what you want to hear, but let me know if I can be of further assistance.

V/R

[REDACTED]  
Deputy Director, Area Support Team 3  
106th Signal Brigade  
Fort Sam Houston, Texas 78234  
[REDACTED]

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, September 17, 2013 10:02 AM  
To: [REDACTED]

(US)  
Subject: Fort Buchanan NEC request Immediate Processing (UNCLASSIFIED)  
Importance: High

Classification: UNCLASSIFIED  
Caveats: FOUO

[REDACTED]

Attempted to reach you re: expediting the approval process to purchase tools/supply/and safety equipment, goal is to construct a gazebo @ our NEC headquarters NLT 29 Sep 13. ASD3, Garrison leadership, and local Safety POC has granted our request, upon receipt please process remaining purchase request prior to Wednesday (18 Sep 13).

V/r

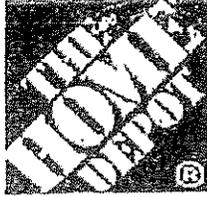
Thank you [REDACTED]  
NEC Director, Fort Buchanan  
[REDACTED]

Classification: UNCLASSIFIED  
Caveats: FOUO

Classification: UNCLASSIFIED  
Caveats: FOUO

Classification: UNCLASSIFIED  
Caveats: FOUO

Classification: UNCLASSIFIED  
Caveats: FOUO



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PREGUNTE... GARANTIAS EXTENDIDAS.  
GRACIAS POR COMPRAR EN THE HOME DEPOT

6401 00021 31043 09/03/13 11:14 AM  
CASHIER [REDACTED] - KER922

ORDER ID: 6401-264726  
RECALL AMOUNT 2485 05  
---CC: Customer-----  
2406 05 2.25 Percent Off 54.32  
MUST RETURN ALL ITEMS FOR A FULL REFUND

	SUBTOTAL	2,430.73
	MUNICIPAL TAX	0.00
	ESTATAL TAX	0.00
TAX EXEMPT	TOTAL	\$2,430.73
XXXXXXXXXXXX6257 VISA		2,430.73
AUTH CODE 033221/8213957		TA

P.O.#/JOB NAME: GAZEBO



6401 21 31043 09/03/2013 4:59

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PREGUNTE... GARANTIAS EXTENDIDAS.  
GRACIAS POR COMPRAR EN THE HOME DEPOT

6401 00022 19046 10/15/13 02:18 PM  
CASHIER [REDACTED] - KER922

ORDER ID: 6401-264726  
RECALL AMOUNT 79.01

	SUBTOTAL	79.01
	MUNICIPAL TAX	0.00
	ESTATAL TAX	0.00
TAX EXEMPT	TOTAL	\$79.01
XXXXXXXXXXXX6257 VISA		79.01
AUTH CODE 048943/6220130		TA

P.O.#/JOB NAME: DELIVERY



6401 22 19046 10/15/2013 2518

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escuchar sobre su experiencia de  
compra. Participe en una breve encuesta  
acerca de su visita en

[www.homedepot.com/opinion](http://www.homedepot.com/opinion)

Necesitará lo siguiente para participar

