United States Senate

WASHINGTON, DC 20510

February 25, 2016

VIA ELECTRONIC TRANSMISSION

Glenn A. Fine
Acting Inspector General
U.S. Department of Defense
2800 Mark Center Drive
Alexandria, VA 22350

Dear Acting Inspector General Fine:

As you are aware, federal law prohibits reprisal against contractor employees for disclosures that the employee believes constitute "[g]ross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract . . . or grant." 10 U.S.C. § 2409. We are concerned that the Department of Defense Office of Inspector General (DoD OIG) may be dismissing contractor employee whistleblower complaints on the basis of a legal analysis that is inconsistent with this statutory language.

For example, the attached investigative report appears to outline substantiated findings regarding significant mismanagement and potential abuse of authority related to a contract. According to information obtained by our offices, the contractor employee who reported these issues to an Inspector General was terminated. The DoD OIG subsequently dismissed the employee's reprisal claims because the employee did not report "a violation of a law, rule, or regulation related to the contract." However, as noted above, the statute expressly contemplates disclosures not only of violations of law, rule, or regulation, but also mismanagement, abuse of authority, and waste. It is troubling that the DoD OIG would dismiss a reprisal complaint without reviewing the allegations according to the standard outlined in law.

Accordingly, please provide written responses to the following questions by March 9, 2016. Please number the answers according to their corresponding questions.

1. In the attached case, did the DoD OIG review the underlying complaint for an allegation of gross mismanagement, a gross waste of funds, or an abuse of authority relating to the contract? If not, why not?

2. Does the DoD OIG have any policy regarding the analysis required in evaluating contractor employee reprisal complaints pursuant to 10 U.S.C. § 2409? Please provide a copy.

3. How many contractor employee reprisal claims, submitted pursuant to 10 U.S.C. § 2409, alleging gross waste, gross mismanagement, or abuse of authority, has the DoD OIG fully investigated within the last 5 years? How many has the DoD OIG dismissed without investigation?

We appreciate your continued cooperation and assistance in this matter. If you have any

questions, please contact Charlie Moskowitz of Senator McCaskill's staff at 202-224-6154, or DeLisa Lay of Senator Grassley's staff at (202) 224-5225.

Sincerely,

Charles E. Grassley
U.S. Senator

Claire McCaskill
U.S. Senator

MISSOURI NATIONAL GUARD
CHIEF OF THE JOINT STAFF
IKE SKELTON TRAINING SITE
2302 MILITIA DRIVE
JEFFERSON CITY, MISSOURI 65101-1203

NGMO-CJS-A

7 February 2014

MEMORANDUM FOR Lieutenant Colonel [redacted]

SUBJECT: Appointment as Inquiry Officer

1. You are appointed as an inquiry officer to conduct an investigation into concerns about the work environment with contract employees and the Public Affairs Office (PAO). At a minimum, investigate the following allegations:

a. Determine if contract employees associated with the PAO's office are working within their contract and if the Missouri National Guard Contracting Officer has been apprised of any issues with the contacted employees? Have the employees been afforded opportunities to use their system of redress.

b. Does the PAO office create a healthy work environment (i.e. are people treated with dignity and respect).

2. Contact the Inspector General Office, Missouri National Guard, prior to beginning your investigation to exchange relevant information and discuss/clarify the concerns.

3. If needed, sworn statements will be taken from all witnesses on DA Form 2823. Your authority to administer oaths is 40.425.2(4) RSMo.

4. Submit your findings and recommendations to me no later than 11 April 2014.

5. [redacted], is detailed to provide you with legal assistance concerning your investigation if you have any questions.

[redacted]

Released by Missouri Army National Guard
To Senate Judiciary Committee

1 April 2014

MEMORANDUM FOR The [redacted], IKE
Skelton Training Site, 2302 Militia Drive, Jefferson City, MO 65101-1203

SUBJECT: Findings and Recommendations for [redacted]

1. Reference [redacted] and appointment order the following findings and recommendations are forwarded for consideration.

2. In regards to the first topic of inquiry, - " Determine if Contract employees associated with the PAO's office are working within their contract and if the Missouri National Guard Contracting Office has been apprised of any issues with the contracted employees? Have the employees been afforded opportunities to use their system of redress."

a. Answering the first half - Determine if Contract employees (CE) associated with the PAO's office are working within their contract and if the Missouri National Guard Contracting Office has been apprise of any issues with the contracted employees, yes with the evidence found, the CE's were working within the scope of the contract, but the contract employees were not properly equipped by the Public Affairs Office to complete the mission as assigned.

(1) Proper video equipment was not available for the CE's up starting and they had continual problems with equipment, having only one functioning video editing laptop.

(2) Under [redacted] supervision the CE's did receive some additional equipment and were able to produce a 30 minute video.

(3) [redacted], a former employee of the PAO with 17 years professional broadcast experience, in is sworn statement, said the CE's didn't have sufficient equipment to complete mission.

b. As to the second half of the questions, "have the employees been afforded opportunities to use their system of redress." The contract employee (CE), [redacted] and [redacted] and [redacted] were not afforded proper redress as outlined by the contract W912JB-13-D-4002.

(1) According to the contract, the Contracting Officer Representative (COR), [redacted] was required to complete a Quality Assurance Worksheet by the end of each month from the start date the employees, reference Exhibit 1 Contract, page 17 of 27, paragraph 5. As of the termination date of the [redacted] and [redacted], no Quality Assurance Worksheets (QAW) had been completed. One was submitted on 6 February 2014 (exhibit 2 QAW) days after the CE's were terminated. Also, as per the

contract, if the employee performance dropped below "green" to a "yellow" or "red" rating the employee is to be counseled on their performance and is to initial the QAW acknowledging the lack in acceptable performance. The 6 February 2014 QAW has no initials.

(2) The only performance issue that was ever raised during the CE's employment with the PAO was against [redacted] and this resolved itself under [redacted] supervision. [redacted] received a written warning from [redacted] the contract firm which the CE worked for. [redacted] and [redacted] initiated the complaint to [redacted] based on concerns about [redacted] performance. The warning was titled "Final Warning" this information was forward to [redacted] on 18 Nov 13 a few day within being moved under control of [redacted]. [redacted] received the notice from [redacted] on the situation with [redacted] final warning and was ask to respond on his current performance under his supervision. At that time [redacted] needed more time to evaluate, which he did and responded back a week later that [redacted] was "on track and we have no issues" (exhibit 3, [redacted] Back on Track).

(3) [redacted] inquired with [redacted] about rumors of his lacking performance working with the National Guard. He was informed by [redacted] on 30 January 2013 (exhibit 4, [redacted]) that there would be reports to his performance if there were any concerns." As of 30 January, there were no reports or QAWs from the National Guard about poor performance concerns about [redacted]. [redacted] was informed by [redacted] on 31 January he was being terminated by the [redacted] on request of the National Guard.

(4) The COR, [redacted] knew the requirements stating he read the contract and that the COR was responsible for the QAW. See Statement from [redacted] dated 8 April, paragraph 2. For another example showing knowledge of the QAW requirement see Exhibit 5 and 6 outline conversation with [redacted] and [redacted] about requirement of QAW (exhibit 5, Requirement of QAW) and that only one QAW was completed (exhibit 6, QAW (2)).

(5) The USPFO Contracting Office was not copied on the QAW nor kept in the loop on the problems with the CE's until the PAO was working to terminate the [redacted] employee.

[redacted]

4. My findings and recommendations regarding if there was a healthy work environment are as follows.

a. As referenced in ADP 6-22, 1 August 2012 states, "Toxic leadership is a combination of self-centered attitudes, motivations, and behaviors that have adverse effects on subordinates, the organization, and mission performance." Further stating, "The negative leader completes short-term requirements by operating at the bottom of the continuum of commitment, where followers respond to the positional power of their leader to fulfill requests. This may achieve results in the short term, but ignores the other leader competency categories of *leads* and *develops*. Prolonged use of negative leadership to influence followers undermines the followers' will, initiative, and potential and destroys unit morale."

(1) Several negative attributes have been alleged against [redacted] as reflected in statements from [redacted] and I believe that [redacted] demeanor, quick to "blow up or get excited," or "my way or the highway" approach, does not allows for a healthy, productive work environment in an office that requires creativity and latitude to completed timely accurate reports.

(2) As noted in the first half of the inquiry, the improper handling of CE's as the supervisor, directing the removal of the contract employees was negligent and a direct reflection of the work environment and failure of the leadership of both [redacted] and [redacted].

(3) I have gleaned from interviews, even though [redacted] has acted poorly on several occasion and responded with poor judgment, she has always attempted to do the best she knows how.

[redacted]

SUBJECT: Findings and Recommendations for [redacted]

15 Encls.
1. Exhibit 1 Contract
2. Exhibit 2 QAW (1)
3. Exhibit 3 [redacted]
   Back on Track
4. Exhibit 4, [redacted]
5. Exhibit 5, Requirement of QAW
6. DA Form 2823, [redacted]
7. DA Form 2823,
8. DA Form 2823,
9. DA Form 2823,
10. DA Form 2823,
11. DA Form 2823,
12. DA Form 2823,
13. DA Form 2823,
14. DA Form 2823,
15. DA Form 2823,
16. DA Form 2823,

[redacted]
LTC, MP
Inquiry Officer

Released by Missouri Army National Guard
To Senate Judiciary Committee

SUBJECT: Findings and Recommendations for [redacted]

Back on Track

4. Exhibit 4, [redacted]
5. Exhibit 5, Requirement of QAW
6. DA Form 2823, [redacted]
7. DA Form 2823,
8. DA Form 2823,
9. DA Form 2823,
10. DA Form 2823,
11. DA Form 2823,
12. DA Form 2823,
13. DA Form 2823,
14. DA Form 2823,
15. DA Form 2823,

CONTRACT
EXHIBIT 1

ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF 26

1. CONTRACT/PURCH. ORDER/ AGREEMENT NO.	2. DELIVERY ORDER/ CALL NO.	3. DATE OF ORDER/CALL (YYYYMMMDD)	4. REQ./ PURCH. REQUEST NO.	5. PRIORITY
W912JB-13-D-4002	9H03	2013 Aug 05	0010384908	

6. ISSUED BY CODE W912NS
USPFO FOR MISSOURI
ATTN: [redacted]
IKE SKELTON NG TNG SITE
7101 MILITARY CIRCLE
JEFFERSON CITY MO 65101-1200

7. ADMINISTERED BY (if other than 6) CODE
SEE ITEM 6

8. DELIVERY FOB
[X] DESTINATION
[ ] OTHER
(See Schedule if other)

9. CONTRACTOR CODE [redacted] FACILITY [redacted]
NAME AND ADDRESS [redacted]

10. DELIVER TO FOB POINT BY (Date) (YYYYMMMDD)
SEE SCHEDULE

11. MARK IF BUSINESS IS
[ ] SMALL
[ ] SMALL DISADVANTAGED
[X] WOMEN-OWNED

12. DISCOUNT TERMS
Net 30 Days

13. MAIL INVOICES TO THE ADDRESS IN BLOCK
See Item 15

14. SHIP TO CODE W90T91
OFFICE OF THE ADJUTANT GENERAL
PUBLIC AFFAIRS OFFICE
2302 MILITIA DRIVE
JEFFERSON CITY MO 65101-1203

15. PAYMENT WILL BE MADE BY CODE HQ0670
DFAS-INDY VP GFEBS HQ0670
8899 E 56TH ST
INDIANAPOLIS IN 46229-3800

MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.

16. TYPE OF ORDER			
	DELIVERY/ CALL	X	This delivery order/call is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.
	PURCHASE		Reference your quote dated. Furnish the following on terms specified herein. REF:

ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

NAME OF CONTRACTOR | SIGNATURE | TYPED NAME AND TITLE | DATE SIGNED (YYYYMMMDD)

[ ] If this box is marked, supplier must sign Acceptance and return the following number of copies:

17. ACCOUNTING AND APPROPRIATION DATA/ LOCAL USE
See Schedule

18. ITEM NO.	19. SCHEDULE OF SUPPLIES/ SERVICES	20. QUANTITY ORDERED/ ACCEPTED*	21. UNIT	22. UNIT PRICE	23. AMOUNT
	SEE SCHEDULE				

* If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.

24. UNITED STATES OF AMERICA
TEL: [redacted]
EMAIL: [redacted]
BY: [redacted]
CONTRACTING / ORDERING OFFICER

25. TOTAL $211,558.88
26. DIFFERENCES

27a. QUANTITY IN COLUMN 20 HAS BEEN
[ ] INSPECTED [ ] RECEIVED [ ] ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED

b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE | c. DATE (YYYYMMMDD) | d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

f. TELEPHONE NUMBER | g. E-MAIL ADDRESS

28. SHIP NO. | 29. DO VOUCHER NO. | 30. INITIALS

[ ] PARTIAL [ ] FINAL

31. PAYMENT
[ ] COMPLETE [ ] PARTIAL [ ] FINAL

32. PAID BY

33. AMOUNT VERIFIED CORRECT FOR

34. CHECK NUMBER

35. BILL OF LADING NO.

36. I certify this account is correct and proper for payment.
a. DATE (YYYYMMMDD) | b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

37. RECEIVED AT	38. RECEIVED BY	39. DATE RECEIVED (YYYYMMMDD)	40. TOTAL CONTAINERS	41. S/R ACCOUNT NO.	42. S/R VOUCHER NO.

Released by Missouri Army National Guard
To Senate Judiciary Committee