United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

August 7, 2017

The Honorable James Mattis
Secretary
Department of Defense
1400 Defense Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:

I am writing regarding a report questioning tens of millions of taxpayer dollars spent by an Army subcontractor that may have been lost to waste, fraud or abuse.[1]

On May 12, 2015, Senator Rob Portman and I wrote to U.S. Army Contracting Command regarding the so-called "Legacy East" contract, a project to provide counterinsurgency intelligence experts to mentor and train the Afghan National Security Forces.[2] Partly as a result of our concern, as well as the deficiencies identified by the Special Inspector General for Afghanistan Reconstruction (SIGAR),[3] the Defense Contract Audit Agency (DCAA) reviewed this contract. The original Army contract was with Imperatis, formerly Jorge Scientific, a company that is unfortunately known for having allowed its personnel to engage in rampant drug and alcohol abuse in Afghanistan.[4] The DCAA audited one of Imperatis's subcontractors on Legacy East, New Century Consulting (NCC).

DCAA questioned over $50 million in costs NCC billed to the Army, through Imperatis, between 2008 and 2013. Included in the items billed taxpayers were seven luxury cars—including Porsches, Alfa Romeos, a Bentley, an Aston Martin, and Land Rover. NCC claimed that the vehicles were available to all employees but the vehicles actually were used exclusively

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[1] Defense Contract Audit Agency, *Independent Audit Report on New Century Consulting Ltd's Proposed Amounts on Unsettled Flexibility Priced Contracts for Fiscal Years 2008, 2009, 2010, 2011, 2012, and 2013* (DCAA Report No. 2191-2015T10160001) (Aug. 31, 2016).

[2] Letter from Senator Claire McCaskill and Senator Rob Portman to MG Theodore Harrison, U.S. Army Contracting Command (May 12, 2015).

[3] Special Inspector General for Afghanistan Reconstruction, *Department of the Army's Legacy East Project: Jorge Scientific Corporation's Lack of Supporting Documentation Results in about $135 Million in Questionable Project Costs* (SIGAR 15-43 Financial Audit) (Apr. 21, 2015).

[4] Letter from Senator Claire McCaskill to Secretary John McHugh, Department of the Army (Oct. 22, 2012). *See, e.g., Exclusive: Video Shows Drunk, Stoned US Defense Contractors*, ABC News (Oct. 17, 2012) (http://abcnews.go.com/Blotter/video-shows-drunk-stoned-us-security-contractors/story?id=17493189).

by the Chief Executive Officer (CEO), Chief Operating Officer (COO), Chief Financial Officer (CFO) and the significant others of the CEO and CFO. NCC was unable to provide adequate documentation to neither justify the need for "luxury" automobiles nor verify that their use was in accordance with contract regulations. As an example, NCC admitted to using the cars during non-working hours without keeping adequate records of the non-work use.[5]

NCC employed the significant others of the CEO and CFO as "executive assistants." NCC billed for their salaries, even though these executive assistants worked from home and never traveled to customer locations. NCC was unable to provide evidence that these executive assistance actually performed any work; NCC could not even provide a single email that either had written as an executive assistant on behalf of the CEO or COO. Despite the lack of documentation of proof of their work, in 2012 the average salary of these "executive assistants" reached approximately $420,000 each.[6]

The compensation of the CEO and COO themselves also came under scrutiny. The Federal Acquisition Regulation (FAR) limits executive compensation that can be billed to taxpayers. In the case of NCC, the CEO's and COO's 2013 combined compensation of $2,000,000 was more than $200,000 over the limit. In addition to surpassing the ceiling, DCAA further found that an additional $680,000 was unreasonable compensation when compared to what similar executives earned elsewhere.[7]

DCAA also found issue with NCC's compensation to its other personnel. Most of NCC's work was performed by consultants, who deployed overseas to train Afghanistan forces. Under NCC's terms of engagements, the consultants were supposed to be paid at a 100% rate when deployed overseas, and only 60% when on leave. However, NCC actually paid its consultants at the full rate, even when they were not deployed or when they were not working. These excessive payments cost taxpayers over $15 million. NCC also paid its consultants more than $2.2 million in "completion" bonuses in 2013 even though these consultants did not fulfill the terms required to earn those bonuses. Separately, NCC paid its consultants more than $1 million in 2013 in excess "performance" bonuses despite the fact that those bonuses were not required by the consultants' contracts.[8]

Even relatively small amounts that the auditors found raise significant concerns. DCAA found that NCC spent over $1,500 on alcohol in violation of the FAR, and spent $42,000 in cash

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[5] *Id.*

[6] *Id.* Committee staff converted the salary in Great Britain pounds into dollars using the relevant exchange rate provided in the DCAA audit. The salary for each assistant was not broken down; the total for both in 2012 was $838,414.

[7] *Id.*

[8] *Id.*

on automatic weapons in order to circumvent the contract's prohibition on purchasing them,[9] a significant problem given the prime contractor's earlier violations of alcohol and firearms policies in Afghanistan.[10] In addition, NCC had millions of dollars in other questioned or unallowable expenses, including severance payments, rent, unnecessary licensing fees, extensive austerity pay, and expenses for air travel for personal reasons. The costs were questioned based on a number of factors, including the lack of a detailed record of the costs and a lack of documentation to support the justification of the costs.[11]

Despite all of the listed issues with NCC's performance and billing practices, the Army continued to engage in contracting with NCC for sensitive work in Afghanistan. As discussed above, NCC was a subcontractor of the prime contractor Imperatis at the outset of the Legacy East contract. In September 2013, the Army selected NCC as the new prime contractor for the Legacy East contract.[12]

The program remained troubled. Just last month, SIGAR reported that because of a lack of performance metrics, it is "almost impossible" to assess whether the hundreds of millions of dollars spent on the mentoring and training programs were effective.[13]

The DCAA is now auditing NCC during its years as the prime contractor for Legacy East between 2013 and 2016. I hope that its findings, scheduled for publication next year, reveal that the Department's contract oversight improved. However, in the meantime, in order to understand the Department's response to this audit and its efforts to ensure that NCC abides by its contracts and the FAR, please provide the following information no later than August 28, 2017:

1. What Department officials had award, management, and/or oversight responsibilities related to the Legacy East contract between 2008 and 2013? Please include information detailing each official's area(s) of responsibility, the dates during which they had those responsibilities, and any performance awards received related to their performance during that time period.

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[9] Defense Contract Audit Agency, *Independent Audit Report on New Century Consulting Ltd's Proposed Amounts on Unsettled Flexibility Priced Contracts for Fiscal Years 2008, 2009, 2010, 2011, 2012, and 2013* (DCAA Report No. 2191-2015T10160001) (Aug. 31, 2016).

[10] Letter from Senator Claire McCaskill to Secretary John McHugh, Department of the Army (Oct. 22, 2012).

[11] *Id.*

[12] Defense Contract Audit Agency, *DCAA Oversight of Imperatis: June 2017 Update* (June 2017).

[13] Special Inspector General for Afghanistan Reconstruction, *Afghanistan National Defense and Security Forces: DOD Spent $457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics* (SIGAR 17-57 Audit Report) (July 27, 2017).

2. Describe the approval process for the reimbursement of expenses submitted by NCC to Imperatis, and from Imperatis to the Department.

3. Please provide any Contractor Performance Assessment Reports for both Imperatis and NCC from 2007 until the present.

4. In almost every instance of questioned costs in the audit, DCAA justified its conclusions because NCC failed to provide adequate documentation to support the charges, including in many instances no records at all. What is the Department doing to ensure that NCC will establish and maintain adequate records to verify all charges made to the U.S. Government?

5. What steps is the Department taking to recover the questioned costs from NCC established by DCAA in the audit? Will NCC face any further disciplinary action related to the FAR violations described in the audit?

6. What steps is the Department taking to ensure that NCC is currently in compliance with all FARs governing current contracts? Has NCC been considered for suspension or disbarment from further contracting with the U.S. Government? If not, why not?

If you have any questions please contact Jackson Eaton with my staff at (202) 224-2627 or Jackson_Eaton@hsgac.senate.gov. Please send any official correspondence related to this request to Amanda Trosen at Amanda_Trosen@hsgac.senate.gov. Thank you for your prompt attention to this matter.

Sincerely,

Claire McCaskill

Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman