

**Dunn, Porter F.**

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**From:** Jones, Darin A.  
**Sent:** Friday, April 20, 2012 2:58 PM  
**To:** Kelley, Patrick W. (DO)(FBI)  
**Cc:** Haley, Richard L.; Dunn, Porter F.  
**Subject:** Concern of whether an OCI and/or Procurement Integrity Act violation exists with the FBI's procurement of the new Enterprise Operations Center (EOC)

**Importance:** High

**Categories:** Red Category

Pat,

Good Afternoon. Per our phone conversation yesterday, I am sending you the email you requested describing the concerns the Procurement Section / Facilities Contracts Unit has regarding whether an Organizational Conflict of Interest (OCI; see FAR Subpart 9.5) and/or Procurement Integrity Act violation exists with the FBI's procurement of the new Enterprise Operations Center (EOC) that was awarded to Computer Sciences Corporation (CSC) in August 2011.

- The issue in question is whether the contractor, CSC, was improperly awarded the FBI's new \$40M EOC task order due to a conflict of interest and/or Procurement Integrity Act violation because the former ITSD AD, Dan Dubree, who was involved in the EOC requirement before and after task order award, has been reported to be working for CSC.

- There does not appear to be any question regarding whether Mr. Dubree was involved in the EOC requirement both before and after task order award. I have never met Mr. Dubree, and I have no knowledge of his involvement with this procurement other than seeing his name on an OTD EC from Dec 2011 and hearing his name being mentioned in meetings/conversations where others have stated that he was involved.

- The reports of Mr. Dubree working for CSC have not been verified, and per our conversation yesterday, our efforts are to determine whether these reports are accurate. These reports have come from conversations I have had with OTD and SecD personnel. As a Contracting Officer and the Chief of the Facilities Contracts Unit, I am required to provide information regarding actual or potential procurement irregularities/improprieties to OGC. If these employment reports are accurate, then further investigation will be required to ensure the integrity of the EOC task order award.

- Per a meeting I attended with a few ITSD personnel on April 17<sup>th</sup> as well as the information you provided to me yesterday, Mr. Dubree is currently working as a "consultant" in Texas. As we discussed, if Mr. Dubree's alleged employment with CSC is in the form of a consultant and/or subcontractor that was hired by CSC, then this consultant/subcontractor relationship with CSC, in terms of an OCI and the Procurement Integrity Act, if verified, would be the same as if Mr. Dubree was a direct employee of CSC. This alleged employment, whether direct or indirect, would establish a reportable OCI condition on CSC's behalf and would raise serious Procurement Integrity Act concerns where a violation of the Act may have likely occurred.

- In response to a FBI solicitation, all offerors are required to provide a certifying statement with its offer that the offeror does not have an actual or potential conflict of interest in accordance with FAR Subpart 9.5 – Organizational and Consultant Conflicts of Interest. This contractor OCI reporting requirement extends after award as well. I have no knowledge of whether CSC provided any 9.5 certifying statements to the Contracting Officer (I am not the CO of record for this task order nor have I seen the task order file), before or after award, for this procurement.

- As you know better than I, in short, the Procurement Integrity Act specifically restricts the actions of former federal employees regarding procurements that the former employee was involved in while employed with the federal government. If the reports described above are accurate, further investigation will be required as it appears that a violation of the Act has likely occurred.

SUBJECT TO PROTECTIVE ORDER

FBI001847

Thank you and please contact me with any questions.

Very Respectfully,

Darin A. Jones, Esq., P.E.  
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U.S. Department of Justice  
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FBI001848

**Prizio, Tiffany**

**From:** Haley, Richard L.  
**Sent:** Tuesday, January 31, 2012 12:12 PM  
**To:** McCarty, William D.  
**Cc:** Gohke, Laura S.; Prizio, Tiffany; Chase, Edward H.  
**Subject:** Re: Memorandum for Record--Response to allegation of Violation of Law

Go final

**From:** McCarty, William D.  
**To:** Haley, Richard L.  
**Cc:** Gohke, Laura S.; Prizio, Tiffany; Chase, Edward H.  
**Sent:** Tue Jan 31 11:58:07 2012  
**Subject:** FW: Memorandum for Record--Response to allegation of Violation of Law

If you are good with the changes Rich, Laura will make the document final.

Bill

**From:** Haley, Richard L.  
**Sent:** Monday, January 30, 2012 9:43 PM  
**To:** McCarty, William D.  
**Cc:** Prizio, Tiffany; Gohke, Laura S.; Chase, Edward H.  
**Subject:** Re: Memorandum for Record--Response to allegation of Violation of Law

Document looks great Bill. Can we make one last adjustment (below) and then have Laura go final.

**From:** McCarty, William D.  
**To:** Haley, Richard L.  
**Cc:** Prizio, Tiffany; Gohke, Laura S.  
**Sent:** Mon Jan 30 12:36:23 2012  
**Subject:** FW: Memorandum for Record--Response to allegation of Violation of Law

Rich,

Ed did a wonderful job in reorganizing and enhancing the MFR.

Once you clear the document for final Laura will finalize it. I am not sure if this type of doc. is suppose to be an EC or if there is another format that should be utilized.

Bill

1  
SUBJECT TO PROTECTIVE ORDER

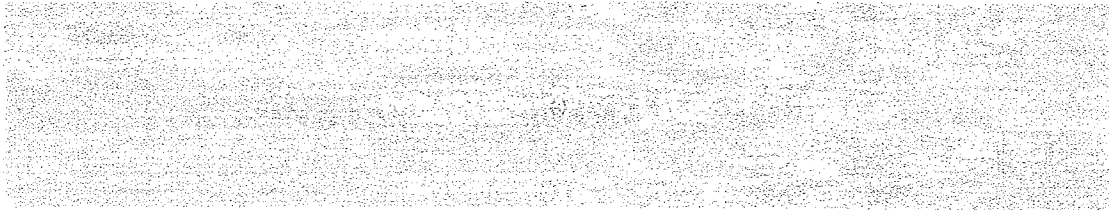
FD1000459

From: Chase, Edward H.  
Sent: Monday, January 30, 2012 10:36 AM  
To: McCarty, William D.  
Subject: PW: Memorandum for Record--Response to allegation of Violation of Law

I think this one has a few more edits. Sorry for the confusion.

From: Chase, Edward H.  
Sent: Monday, January 30, 2012 10:32 AM  
To: McCarty, William D.  
Subject: RE: Memorandum for Record--Response to allegation of Violation of Law

Bill--




I'm still interested in an HRD (and/or GC) validation of my arguments about the classification etds.

So take a look and see if any of this works for you. Obviously, disagree if you don't like it.

Ed

MEMORANDUM FOR THE RECORD TO ASSISTANT DIRECTOR OF HUMAN  
RESOURCES

FROM: Richard Lee Haley, II   
Assistant Director/Chief Financial Officer  
Finance Division

SUBJECT: Alleged Violations of the Law  
Contracting Officers Performing Budget and Accounting Functions

**Alleged Violation of Law:** Mr. Darin Jones, Unit Chief, Facilities Contracts Unit (FCU) alleged that the Assistant Director (AD) and Chief Financial Officer (CFO), Finance Division (FD) was violating the law by requiring FCU's contracting staff to perform accounting and/or budget related functions.

**Contracting Professionals Performing Budget and Accounting Functions:** In a meeting with the AD FD and Procurement Section senior managers, Mr. Jones alleged that the AD was violating the law by requiring Contract Officers (CO) and Contract Specialists (CS) to perform accounting and/or budget related functions. The specific functions at issue are those associated with the preparation of quarterly reports of un-liquidated and un-dispensed obligations on the contracts for which they are responsible for managing and providing contract administration.<sup>1</sup>

**Responsibility:** Under the CFOs (CFO) Act (P.L. 101-576), the CFO is required by law to conduct an inquiry into any allegation of waste, fraud, and abuse, or other apparent or real violation of law. The following are the results of an inquiry conducted into Mr. Jones' allegation of a violation of law.

**Background:** On Wednesday, January 13, 2012, Mr. Jones presented to the AD FD with two Office of Personnel Management (OPM) Position Classification Standards: (1) Contracting Series GS-1102, and (2) Accounting and Budget Group, GS-0500, and alleged that it was

<sup>1</sup> Un-liquidated obligations are those obligations or balances on contracts that remain, when: (1) during contract performance invoices are paid, but balances on the contract, or on individual line items in the contract remain, and (2) after the period of performance is completed and all invoices are paid, contracts have un-liquidated balances that must be deobligated. Un-dispensed obligations arise from the partial acceptance of goods and the resulting partial payments, leaving an un-dispensed amount of funds to be tracked and accounted for and undelivered goods to be delivered and accepted and final payment made. Those funds not yet paid as a result of partial payments are un-dispensed obligations.

Memorandum for the Record to the Assistant Director of Human Resources  
Re: Alleged Violations of the Law  
Contracting Officers Performing Budget and Accounting Functions

Page 2

improper and in violation of the law for COs and CSs to perform functions associated with accounting and budget professionals in the GS-0500 Series. Mr. Jones' argument appeared to be based on select areas of the two standards. These areas, including sentences highlighted by Mr. Jones prior to submitting the Classification Standards to the AD, are attached.

In addition to the legal issue, it appeared during the discussion that Mr. Jones was concerned with the impact of the obligation reports on the workload of the contracting professionals in his unit. The contracting staff must, on a quarterly basis, sift through pertinent contract folders (active and inactive but not closed) to identify the necessary data for the obligation reports. In some cases, it may be necessary for them to contact vendors of the Contracting Officer's Technical Representative to obtain portions of the data. This collection and compilation of data utilizes time normally devoted to the processing and awarding of new contracts and contract administration.

This memorandum responds to both the legal question raised by Mr. Jones and the workload issue.

Discussion: Assignment of the obligation reports and the Classification Standards: It is the FD's strong opinion that there is no conflict between the assignment of the obligation reports to COs and CSs and the OPM Classification Standards. Mr. Jones' assertion to the contrary appears to be based on language from the Classification Standards that state:

"The [accounting] work [in the GS-0500 Series] includes:

- Designing, developing, operating, or inspecting account systems;
- Prescribing accounting standards, policies, and requirements;
- Examining, analyzing, and interpreting account data, records, and reports; or
- Advising or assisting management on accounting and financial management matters"

and

"Excluded from this [contracting] series are the following classes of positions: (1) Positions requiring the application of professional accounting knowledge...are classifiable to the Job Family Position Classification Standard for Professional and Administrative Work in the Accounting and Budget Group, GS-0500."

Mr. Jones' apparent interpretation of this language is that the preparation of the obligation reports is an accounting function, and such functions cannot be performed by positions in the GS-1102 Series. In other words, no positions in the Contracting Series may engage in any level of accounting and/or budget activities.

I believe this to be misreading of the Classification Standards by Mr. Jones. In fact, narrative from the Accounting and Budget Group Standards submitted by Mr. Jones states:

SUBJECT TO PROTECTIVE ORDER

FBI000462

Memorandum for the Record to the Assistant Director of Human Resources  
Re: Alleged Violations of the Law  
Contracting Officers Performing Budget and Accounting Functions

Page 3

"Although some positions may include professional and administrative work requiring some knowledge and skills in the accounting and budget area, classification to a series in the Accountant and Budget Group, GS-0500 may not be appropriate. The following table provides examples of situations where work may involve the application of [accounting and budget] related knowledge and skills, but not to the extent that it may warrant classification to a series in this job family [the Budget and Accounting Group]. One item on the referenced table is "Work involves a combination of accounting-related duties and other subject matter when the predominant work is not accounting."

The GS-1102 Contracting Series is cited as an example of such a situation.

Therefore, a position can have a combination of accounting and contracting duties and be classified under GS-1102 as long as contracting is the predominant work. Note the following example from the Federal Acquisition Regulation, FAR 4.804-5, Procedures for closing out contract files, which states:

"The Contract Administration Office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the Contract Administration Office must review the contract funds status and notify the Contracting Office of any excess funds the Contract Administration Office might deobligate. When complete, the administrative closeout procedures must ensure that... (15) Contract funds review is completed and excess funds deobligated."

Note: Within the FBI there is not a separate Contracting Office and Contract Administration Office; COs and CSs perform both functions.

Management's right and responsibility to make assignments: Classification Standards play an important role in government operations by ensuring consistency and accuracy in the classification and grading of positions. They do not, however, usurp either the right or responsibility of managers to efficiently and effectively manage their programs. The OPM website states:

"Position classification standards are descriptive of work as it exists and is performed throughout the Federal service. While they indicate the proper series, titles, and grades of positions, they do not alter the authority of agency managers and supervisors to organize programs and work processes; to establish, modify, and abolish positions; to assign duties and responsibilities to employees; and to direct and supervise the accomplishment of their assigned missions. The classification system should be a guide to judgment and supportive of each agency's efforts to manage its workforce."

Information on contract un-liquidated and un-disposed balances serve many useful purposes. It alerts FBI management to the possible availability of funds that will not be needed for their original purpose and could be realigned to other critical needs.

SUBJECT TO PROTECTIVE ORDER

FBI000463

Memorandum for the Record to the Assistant Director of Human Resources  
Re: Alleged Violations of the Law  
Contracting Officers Performing Budget and Accounting Functions

Page 4

Obligations information is also a measure of contract performance and aids in contract administration. Un-liquidated obligations and un-dispensed obligations are reported and audited annually, and are a key indicator of the FBI's financial health. Not only does the data need to be correct, but it needs to be free from issues that would adversely affect the FBI's annual financial statement and its ability to receive an unqualified audit opinion. The obligation reports contribute to the FD and FBI's mission, and it is essential they be completed.

Unfortunately, the FBI's financial system is over 30 years old and lacks the capability to fully track obligations beyond the original contract obligation. Therefore, other sources for the data must be found. Since the majority of the needed information can only be found in properly maintained contract files, this places the CO in the best position to quickly and accurately secure the required data and complete the necessary reporting spreadsheet. Based on discussions with several COs, it only takes a couple of days a quarter to collect the data and complete the spreadsheets.

#### **CFO Finding and Determination:**

Based on the above findings, I have determined that there is no waste, fraud, and abuse, or violation of law in having the COs and CSs collect and report data on un-liquidated obligations from active contracts and un-dispensed obligation from completed but not closed contracts.

Senior FBI leadership has determined that it is essential that this data be collected and reported quarterly. In my professional judgment as the CFO and AD FD, the most efficient method to accomplish this objective is to utilize the Procurement Section's COs and CSs. Assignment of this responsibility to other FD staff would require a substantially greater effort to complete the reporting, and would still require the involvement of the COs and CSs given that the contract files serve as a repository for most or all of the needed information.

The FBI is currently developing the Unified Financial Management System (UFMS) to modernize the tracking and reporting of financial and procurement activity. One of the planned functionalities of UFMS is the ability to track contract transactions from commitment to obligation, payment, and contract closeout, including deobligation of funds where appropriate. Hopefully, UFMS, when completed, will reduce or eliminate the need for COs and CSs to collect and report on un-liquidated and un-dispensed obligations.

Attachment



Attachment

Relevant excerpts from Classification Standards submitted by Mr. Jones:

- Contracting Series, GS-1102
  - Exclusions

Excluded from this series are the following classes of positions:

1. Positions requiring the application of professional accounting knowledge (e.g. auditing contractors' accounting systems and records, verifying proposed or claimed costs, and identifying those that are questionable) are classifiable to the Job Family Position Classification Standard for Professional and Administrative Work in the Accounting and Budget Group, GS-0500.

- Accounting and Budget Group, GS-0500
  - Accounting, GS-0510

This series covers positions that advise or or administer, supervise, or perform professional accounting work that requires the application of accounting theories, concepts, principles, and standards to the financial activities of governmental, quasi-governmental, or private organizations. The work includes:

- Designing, developing, operating, or inspecting accounting systems;
- Prescribing accounting standards, policies, and requirements;
- Examining, analyzing, and interpreting accounting data, records, and reports; or
- Advising or assisting management on accounting and financial management matters.

Accounting theories, concepts, principles, and standards address these types of duties:

- Determining the boundaries of an accounting entity;
- Recognizing and measuring revenues;
- Matching revenues and expenses by applying methodologies such as accrual accounting and depreciation;
- Defining and measuring by applying methodologies such as standard, process, job-order, and activity-based costing; and
- Full disclosure on financial statements.

Accountants designed and develop financial information systems. They also operate, maintain, improve, and evaluate established systems for determining the cost of an entity's activities, for financial reporting, and for cash management and internal control processes. The accountant engaged in accounting system operation and maintenance may address the adequacy of a system design, the adequacy of current data in providing financial information, or ways to use the system to satisfy new information requirements. The accountant engaged in cash management or internal control operations may address the efficiency and economy with which funds are obligated, transferred, controlled, and reported.

\* Exclusions:

- o Although some positions may include professional and administrative work requiring some knowledge and skills in the accounting and budget area, classification to a series in the Accountant and Budget Group, GS-0500 may not be appropriate. The following table provides examples of situations where work may involve the application of related knowledge and skills, but not to the extent that it may warrant classification to a series in this job family.
  - \* Work involves a combination of accounting-related duties and another subject matter when the predominant work is not accounting. GS-1102, Contracting.

## Position Classification Standard for Contracting Series, GS-1102

### Table of Contents

SERIES DEFINITION	2
SERIES COVERAGE	3
EXCLUSIONS	2
OCCUPATIONAL INFORMATION	7
TITLES	16
GRADING OF POSITIONS	16
NOTES TO USERS	17
GRADE CONVERSION TABLE	19
FACTOR LEVEL DESCRIPTIONS	19
FACTOR 1, KNOWLEDGE REQUIRED BY THE POSITION	19
FACTOR 2, SUPERVISORY CONTROLS	20
FACTOR 3, GUIDELINES	20
FACTOR 4, COMPLEXITY	21
FACTOR 5, SCOPE AND EFFECT	27
FACTOR 6, PERSONAL CONTACTS	28
FACTOR 7, PURPOSE OF CONTACTS	29
FACTOR 8, PHYSICAL DEMANDS	33
FACTOR 9, WORK ENVIRONMENT	33
OPS BENCHMARK DESCRIPTIONS	43
CONTRACT SPECIALIST, GS-1102-07, BSMK #1	43
CONTRACT SPECIALIST, GS-1102-08, BSMK #1	49
CONTRACT ADMINISTRATOR, GS-1102-09, BSMK #2	49
CONTRACT SPECIALIST, GS-1102-10, BSMK #1	52
CONTRACT SPECIALIST, GS-1102-11, BSMK #2	59
CONTRACT ADMINISTRATOR, GS-1102-11, BSMK #3	59
CONTRACT PRICE/COST ANALYST, GS-1102-11, BSMK #4	64
CONTRACT SPECIALIST, GS-1102-11, BSMK #5	67
PROCUREMENT ANALYST, GS-1102-11, BSMK #6	71
CONTRACT SPECIALIST, GS-1102-12, BSMK #1	75
CONTRACT NEGOTIATOR, GS-1102-12, BSMK #2	79
CONTRACT SPECIALIST, GS-1102-12, BSMK #3	82
CONTRACT ADMINISTRATOR, GS-1102-12, BSMK #4	85
CONTRACT TERMINATION SPECIALIST, GS-1102-12, BSMK #5	90

## Job Family Position Classification Standard for Professional and Administrative Work in the Accounting and Budget Group, GS-0500

### Series Covered by This Standard:

Financial Administration & Program	GS-0501
Accounting	GS-0510
Auditing	GS-0511
Internal Revenue Agent	GS-0512
Tax Specialist	GS-0516
Budget Analysis	GS-0550

### Table of Contents

INTRODUCTION	5
COVERAGE	11
MODIFICATIONS TO AND CANCELLATIONS OF OTHER EXISTING OCCUPATIONAL SERIES AND STANDARDS	12
GENERAL SERIES, TITLING, AND OCCUPATIONAL GUIDANCE	3
IMPACT OF AUTOMATION	23
CROSSWALK TO THE STANDARD OCCUPATIONAL CLASSIFICATION	24
CROSSWALK TO THE STANDARD OCCUPATIONAL CLASSIFICATION	25
EXCLUSIONS	26
HOW TO USE THIS STANDARD	28
POSITION EVALUATION SUMMARY	29
FACTOR LEVEL DESCRIPTIONS	30
FACTOR 1 - KNOWLEDGE REQUIRED BY THE POSITION	30
FACTOR 2 - SUPERVISORY CONTROLS	30
FACTOR 3 - GUIDELINES	34
FACTOR 4 - COMPLEXITY	49
FACTOR 5 - SCOPE AND EFFECT	60
FACTOR 6 - PERSONAL CONTACTS AND FACTOR 7 - PURPOSE OF CONTACTS	62
FACTOR 8 - PHYSICAL DEMANDS	72
FACTOR 9 - WORK ENVIRONMENT	72
GRADE CONVERSION TABLE	73
APPENDICES	74
APPENDIX F1 - FACTOR 1 ILLUSTRATIONS	74
APPENDIX F4 - FACTOR 4 ILLUSTRATIONS	85
APPENDIX F5 - FACTOR 5 ILLUSTRATIONS	94
APPENDIX H - HISTORICAL RECORD AND EXPLANATORY MATERIAL	102