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CASE #: 08UIHQ1199GC18SI **CROSS REFERENCE #:**
TITLE: GENERAL SERVICES
ADMINISTRATION
CASE AGENT (if different from prepared by):

REPORT OF INVESTIGATION

PERIOD COVERED: FROM October 22, 2007 TO March 26, 2008

STATUS OF CASE: CLOSED INVESTIGATION

JOINT AGENCIES:
None.

DISTRIBUTION:
Brian D. Miller
Inspector General
General Services Administration
1800 F Street NW
Washington, DC 20405

FOIA EXEMPTION (7)(c)

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| PREPARED BY: SA [REDACTED] | DATE: 05/16/2008 |
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I. PREDICATION

On October 22, 2007, the U.S. Postal Service Office of Inspector General (OIG), Special Inquiries Division, initiated this investigation at the request of Inspector General (IG) Brian D. Miller, General Services Administration (GSA), to determine the basis for (former) GSA Administrator Lurita Doan's claim that the GSA OIG had engaged in acts of intimidation towards GSA employees and contractors as it related to the Multiple Award Schedule (MAS) contract extension with Sun Microsystems, Inc. during 2006. The investigation would further determine if the claim was deliberately fabricated. U.S. Senator Charles Grassley asked IG Miller to involve another OIG in order to avoid a conflict of interest.

II. SYNOPSIS

The investigation determined contractor complaints, the complaints of a GSA contracting officer, and the general expressions of the GSA workforce formed the foundation upon which Administrator Doan concluded that OIG personnel were engaged in acts of intimidation.

The investigation developed no credible evidence that any GSA career employee deliberately fabricated allegations of GSA OIG intimidation in connection with the Sun contract. However, the evidence reflects that Patricia A. Brooks, then the director of the Information Technology Acquisition Center (ITAC), misinterpreted general comments made to her by Contracting Officer Michael D. Butterfield about the OIG auditors in the Sun matter. Brooks apparently concluded that the auditors had threatened and intimidated Butterfield. Brooks conveyed her interpretation of Butterfield's statements to her supervisor, Federal Acquisition Service (FAS) Commissioner James A. Williams, as if they were specific threats made to Butterfield. Williams, without attempting to verify the information, relayed this information to Administrator Doan and to the GSA OIG. The GSA OIG conducted a preliminary inquiry into the allegation of intimidation and found it was without merit; they reported this information to Administrator Doan. She expressed complete dissatisfaction with the inquiry made by the GSA OIG and insisted that a full investigation be conducted. Although the GSA OIG's subsequent investigation still did not confirm the intimidation allegation, Administrator Doan continued to maintain that GSA OIG auditors intimidated contracting officers.

The investigation determined that Administrator Doan's written and oral statements about her knowledge of the Sun contract and alleged OIG intimidation are inconsistent with other witness statements and evidence.

III. CHRONOLOGY OF EVENTS

On January 15, 2003, GSA merged two of Sun's Multiple Award Schedule (MAS) contracts into one MAS contract. GSA awarded the two original contracts in June 1997 and August 1999.

On August 22, 2004, the Sun contract expired and GSA began issuing temporary extensions while simultaneously continuing negotiations with Sun to determine if GSA would exercise the pending 5-year option period of the contract.

In September 2004, the GSA OIG Office of Audit (specifically the Region 3 Philadelphia Field Office) initiated post-award audits of the two original Sun contracts based upon an OIG Hotline complaint alleging pricing irregularities at Sun.

On February 1, 2005, the OIG presented its preliminary post-award audit findings to the ITAC personnel responsible for the Sun contract. This included Director Patricia L. Pierson, Deputy Director Robert D. Bourne, and Supervisory Contracting Officer Teresa Henderson.

In February 2005, Herman S. Caldwell, Jr., an ITAC supervisory contracting officer and division director, assumed lead contracting officer responsibilities for the Sun contract from Robert Overbey.

On July 22, 2005, the U.S. Senate confirmed Brian D. Miller as the GSA inspector general.

In August 2005, GSA formally announced its plan to restructure many of its primary functions, to include reorganizing the Federal Technology Service (FTS) and Federal Supply Service (FSS) into the newly established FAS.

In August 2005, Caldwell cancelled the Sun contract after failing to reach an equitable agreement with Sun negotiators. GSA management subsequently revoked Caldwell's cancellation notice and issued another temporary extension.

In early February 2006, David A. Drabkin, then the FAS director of acquisitions and now the acting GSA chief acquisition officer, removed Caldwell from the Sun contract.

In February 2006, Pierson appointed Michael D. Butterfield, an ITAC contracting officer, as the lead contracting officer for the Sun contract.

On February 16, 2006, Caldwell advised Drabkin via e-mail that "The Sun Microsystems post award audit is likely to be referred to the AUSA for civil fraud action." Other FAS personnel included on the e-mail were Pierson, Henderson, and Deidre Lee, another senior FAS manager.

On or about March 25, 2006, Patricia A. Brooks replaced Pierson as the ITAC director.

On April 20, 2006, the OIG referred its preliminary post-award audit findings to the Department of Justice (DOJ), specifically the U.S. Attorney's Office for the Eastern District of Virginia (EDVA). The referral entailed three areas of concern indicative of possible harm to the government in that Sun allegedly (1) submitted defective data to GSA, (2) manipulated the price reduction clause, and (3) did not comply with contract requirements. EDVA subsequently transferred the OIG's referral to the Civil Division of DOJ, which combined the OIG's findings with other allegations made against Sun in a civil action already filed in the Eastern District of Arkansas during 2004.

On May 2, 2006, the OIG presented essentially the same briefing it provided to DOJ on April 20, 2006, to ITAC personnel responsible for the Sun contract: Brooks, Henderson, Butterfield, and Sheredia D. Brown, Butterfield's immediate supervisor.

On May 26, 2006, the U.S. Senate confirmed Lurita Alexis Doan as the GSA administrator.

On June 25, 2006, James A. Williams became the FAS commissioner.

On July 3, 2006, John F. Phelps became the GSA chief of staff.

On August 14, 2006, Brooks and Henderson provided a Sun contract negotiations status briefing entitled "Impasse" to Williams and other FAS management including Drabkin. The briefing detailed the on-going problems with the contract negotiations and the OIG referral to DOJ. Butterfield was on annual leave and not present.

On or about August 14, 2006, Brooks informed Williams that the OIG was intimidating and/or threatening Butterfield.

Between August 14, 2006, and August 31, 2006, Williams informed Administrator Doan of the problems with the Sun contract including the inability of the negotiators to agree, the possible intimidation of Butterfield by the OIG, and the OIG's referral to DOJ.

On August 17, 2006, Administrator Doan and Phelps hosted a meeting with representatives from GSA's top ten contractors participating in the Schedules program.

The contractors were Bearing Point, Booz Allen Hamilton, Computer Sciences Corporation, Dell, EDS, Government Services Corporation, IBM, Lockheed-Martin, Northrup-Grumman, and SAIC. In addition, Larry Allen, then the executive vice president of the Coalition for Government Procurement (CGP) and current CGP president, attended the meeting. It was during this meeting that several of the contractors complained to Administrator Doan that OIG audits were overly intrusive and plagued by unnecessary delays that prevented GSA contracting officers from administering and awarding contracts in a timely manner.

On August 27, 2006, Phelps forwarded to Administrator Doan an August 25, 2006, e-mail from Marty Wagner, then the acting deputy commissioner of FAS, indicating that the Sun contract would likely be cancelled. Phelps's e-mail included the comment, "looks like Jim's [Williams] prediction came true." Within several minutes, Administrator Doan responded in an e-mail to Williams and others that "this is truly unfortunate: there will be serious consequences felt across FAS since SUN now intends to run most of its business through SEWP"; meaning GSA would lose millions of dollars in annual revenues generated from industrial funding fees that are payable to GSA by other government agencies when purchasing Sun products through the GSA Schedules program. [Agent Note: SEWP is the National Aeronautics and Space Administration's Solutions for Enterprise-Wide Procurement, a similar and competing program to FAS's Schedules program.]

On August 29, 2006, the OIG met with Administrator Doan, at her request, to brief her about the OIG referral of the Sun contract to DOJ for possible prosecution/litigation.

On August 30, 2006, Administrator Doan, Phelps, and Williams participated in a teleconference to discuss the Sun contract.

On August 31, 2006, Butterfield stepped down as the lead contracting officer for the Sun contract during a teleconference with FAS and ITAC management, including Williams and Brooks, in which Butterfield advised he could not sign the Sun contract in its current state. Williams asked Butterfield if he wanted to step down and Butterfield agreed to do so.

In or about September 2006, Andrew Patchan, the GSA assistant IG for audit, initiated a preliminary review of allegations received from Williams regarding possible OIG intimidation of ITAC contracting officers, namely Butterfield.

On or about September 1, 2006, Shana L. Budd, an ITAC contracting officer, assumed lead contracting officer responsibilities for the Sun contract from Butterfield.

During the period of September 7, 2006, to September 9, 2006, Administrator Doan exchanged e-mails with Allen (CGP) regarding the status of the Sun contract negotiations. Administrator Doan concluded her comment in her last e-mail to Allen with "...Thanks so much for your quick alert to me that there was an issue and thus giving GSA an opportunity to resolve."

On September 8, 2006, Budd renewed the Sun contract by exercising the pending 5-year option clause.

In or about November 2006, the OIG advised Administrator Doan and Williams it conducted a preliminary review of the allegations of OIG intimidation of ITAC contracting officers and determined the allegations were without merit. Administrator Doan insisted the OIG conduct a further, formal review, which the OIG initiated in December 2006.

On November 10, 2006, GSA published the "Fiscal Year 2006 Annual Performance and Accountability Report." Administrator Doan stated under the "Management Challenges" section that "...GSA stakeholders and contracting officers report that there is undue pressure and intimidation from the OIG, and it is vital that we work together to find a balance between proper and independent oversight without intimidating our work force. This will prove to be our most serious challenge."

On February 7, 2007, the GSA OIG Office of Internal Evaluation and Analysis issued a report of investigation concerning "allegations against OIG Region 3 Auditors" for allegedly making threatening statements to GSA contracting officers and placing them under undue pressure and intimidation. The allegations were not substantiated.

On March 13, 2007, Administrator Doan told Senator Grassley in a letter that she had not been "briefed about the Sun Microsystems contract deficiencies" and "had no knowledge of the negotiations or the basis for decisions made regarding the contract" prior to her preparing this letter.

On March 22, 2007, the GSA OIG Mid-Atlantic Regional Office of Investigations issued a report of investigation concerning "alleged procurement integrity violations" committed by Contracting Officer Budd during the Sun contract negotiations. The investigation found indicators of questionable procurement and personnel practices; however, the allegations were not substantiated.

On March 27, 2007, the majority staff of the U.S. House of Representatives Committee on Oversight and Government Reform published a memorandum containing "Supplemental Information Regarding Full Committee Hearing on the General Services

Administration.” The memorandum specifically addressed Administrator Doan’s involvement with the Sun contract, and suggested “...Doan and her top advisors pushed through a government contract with Sun Microsystems under terms that will cost the taxpayer millions of dollars more than these same services cost in the open market.” It did not specifically address the alleged intimidation of contracting officials by the auditors.

On March 28, 2007, the minority staff of the Committee on Oversight and Government Reform published a report entitled, “Allegations of Misconduct at the General Services Administration: A Closer Look.” The report addressed a wide range of issues to include Administrator Doan’s involvement with the Sun contract. The minority staff concluded, among several things, that Administrator Doan did not interfere with the Sun contract negotiations.

In April 2007, DOJ charged Sun in a False Claims Act suit based in part on the OIG’s findings. Among the allegations contained in the suit are:

- “The information that Sun provided to the GSA in connection with the negotiation of its two MAS Contracts ...was knowingly inaccurate and incomplete and misled the GSA contracting officials during negotiations.”
- “The GSA relied on the accuracy of the disclosures in negotiating the Sun MAS Contracts.”
- “The defective disclosures by Sun led to Agencies of the United States Government paying significantly higher prices for hardware and software, as well as hardware and software maintenance, during the Relevant Time Period.”

On September 25, 2007, Senator Grassley’s office published a staff report entitled, “Oversight Investigation Report: Conduct of the General Service Administration’s Officers, Supervisors, and Senior Management Involved in Monitoring, Negotiating, and Awarding of a Multiple Award Schedule Contract to Sun Microsystems, Inc.” The report was not released to the public.

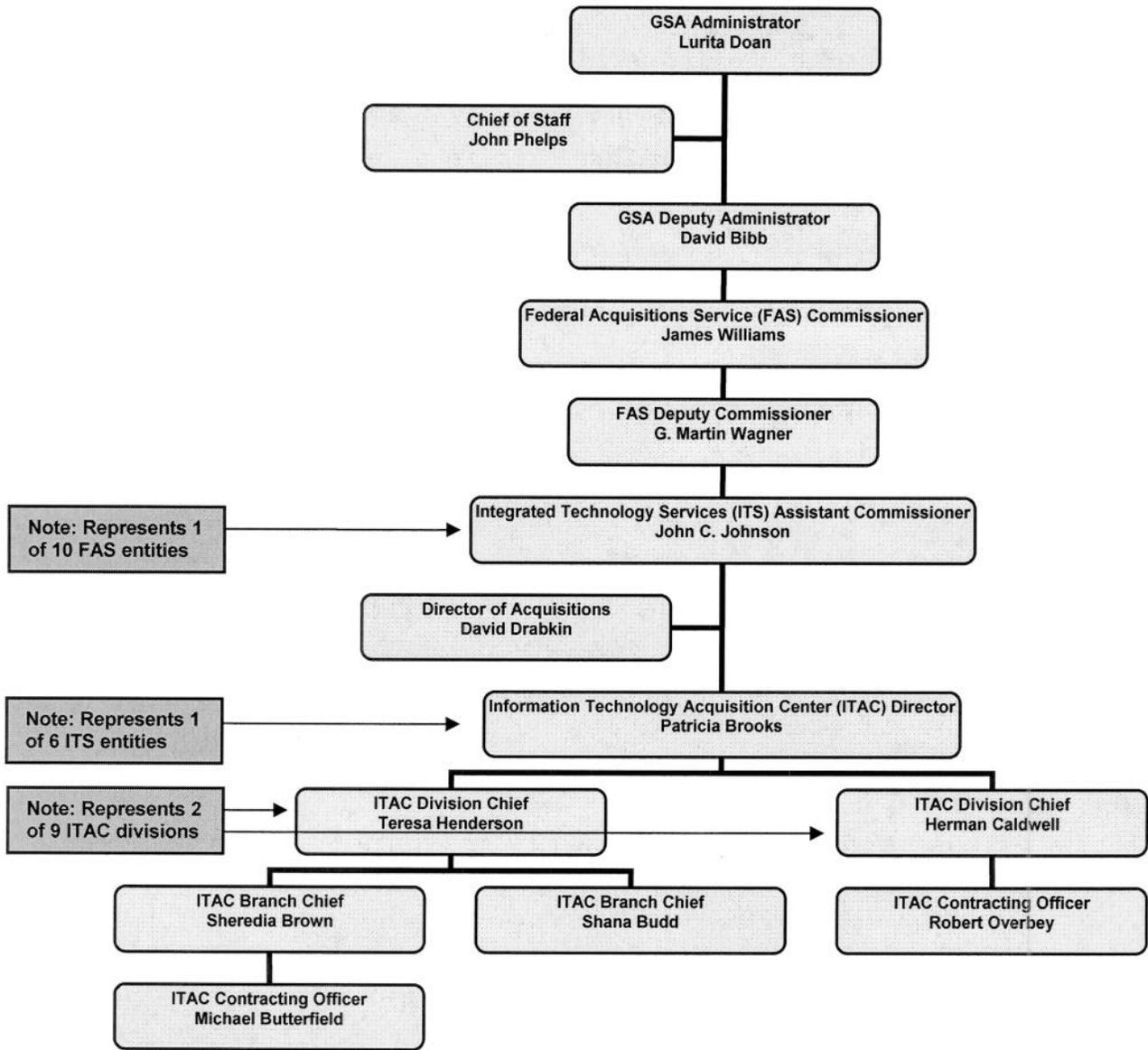
On September 26, 2007, Senator Grassley’s office published another staff report entitled, “Oversight Investigation: Allegations of Intimidation of Contract Officer by OIG Auditors,” which specifically addressed intimidation allegations related to the Sun contract. The report was not released to the public.

On October 12, 2007, Sun cancelled its MAS contract with GSA.

On April 30, 2008, Administrator Doan resigned her position as administrator of GSA.

IV. SUMMARY GSA/FAS/ITAC ORGANIZATIONAL CHART

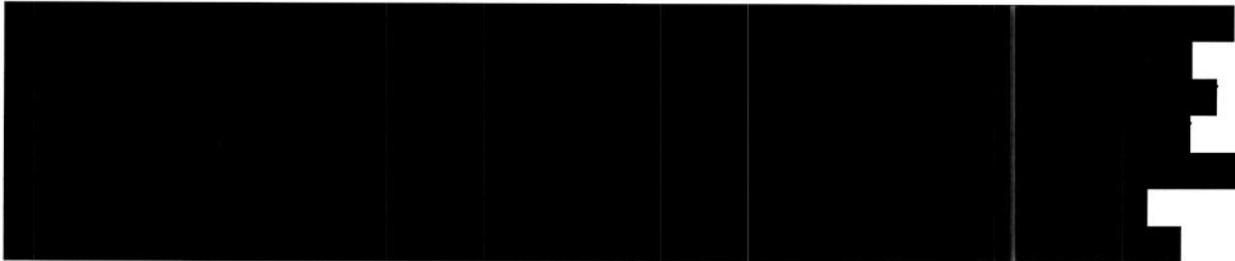
The following organizational chart summarizes the GSA chain-of-command as it related to the Sun contract during August and September 2006. This chart is not all-inclusive and was constructed from public records and information obtained during interviews.



V. SUPPORTING INTERVIEWS

GSA/FAS/ITAC Environment

Jeffrey Koses, Director, Office of Acquisition Operations, FAS:



(Exhibit 1).

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Gary Haag, Contracting Officer:

Haag, a former ITAC contracting officer,



(Exhibit 2).

FOIA EXEMPTION b5, b6, 7C

Andrew Patchan, GSA Assistant IG for Audit:

Patchan stated that some contracting officials probably were inclined to agree with auditor findings because of difficulty in fully understanding and interpreting audit data. Furthermore, he stated the usually greater experience levels possessed by the auditors often encourage the lesser experienced contracting officials to seek and obtain more auditor involvement. Patchan also noted contracting officers might have as many as 100 contracts under their control at any given time, whereas auditors have significantly

fewer (e.g. 1 to 3 audit engagements at one time) and can focus much more attention on a particular contract (Exhibit 3).

James Williams, FAS Commissioner:

Williams said that in the first several months of his arrival as the commissioner of FAS, seemingly all issues rose to his level because most of the management team was serving in acting and often multiple capacities. He believed the ITAC, a FAS organization approximately three or four levels below Williams, was a victim of this "leadership vacuum," and this was a major reason why he became so involved in the Sun contract negotiations and Butterfield's resignation. Williams also stated that the ITAC is an example of a GSA entity that has been overworked and understaffed. Williams also recalled, at the time, the ITAC appeared to be overly influenced by the OIG, OGC, OCAO, and the Office of the Chief Financial Officer (OCFO) when he took over as the FAS commissioner. He opined the aforementioned offices attempted to fill the leadership vacuum but ended up inadvertently causing the ITAC, like much of FAS, to lose focus (Exhibit 4).

Issue: Determine the basis for Administrator Doan's claim that the GSA OIG had engaged in acts of intimidation towards GSA employees and contractors as it related to the Sun contract extension during 2006. The investigation would further determine if the claim was deliberately fabricated.

Issue Finding:

Lurita Doan, former GSA Administrator:

Administrator Doan said that, during an August 2006 meeting with representatives from GSA's top ten contractors participating in the Schedules program, several of the contractors expressed grave concern about the OIG and insisted the OIG's actions were inappropriate and not conducive to a productive business environment. She said the group identified the OIG as their number one problem area when conducting business with GSA. Administrator Doan added this concerned her greatly, and noted that even Williams told her during his interview for his position as FAS commissioner that he had quit doing business through GSA for the very same concerns the schedule holders had expressed to her, when he was serving as a contracting executive with the Department of Homeland Security. Administrator Doan stated that she also heard similar complaints from GSA employees when she traveled to and hosted meetings with GSA regional offices around the country.

Administrator Doan said she first learned of a specific incidence of possible intimidation of a GSA contracting officer by OIG officials sometime around October 2006, plus or minus one month. She recalled that Williams brought the issue to her attention during a monthly meeting she was hosting with the OIG. Administrator Doan said no one was identified by name, but that she considered the situation very serious and asked the OIG to look into the matter. She recalled the IG reported back to her at the next monthly meeting, whereby the IG stated he called an OIG employee in Region 3 (the region identified as the problem) and determined Williams' assertion(s) to be without merit. Administrator Doan characterized the IG's efforts, i.e. making a few phone calls, as "simplistic." She commented that she insisted the IG investigate the matter further.

Administrator Doan said she did not know that Michael Butterfield was the GSA contracting officer allegedly intimidated by the OIG until the Committee hearings in early 2007. Likewise, she was unaware until that same time that he was the contracting officer responsible for the Sun contract (Exhibit 5).

James Williams, FAS Commissioner:

Williams said Brooks told him following the August 14, 2006, impasse briefing regarding the Sun contract that the auditors were intimidating Butterfield. Furthermore, Brooks said the OIG threatened Butterfield by telling him, "If you put this deal through, you'll never work in this town again," or something akin to this statement. Subsequent to the impasse briefing and during the period of August 14, 2006, to August 31, 2006, Williams informed Administrator Doan of the problems with the Sun contract negotiations. This included notifying her of the inability of the negotiators to agree, the OIG's referral to DOJ, and the possible intimidation of Butterfield by the OIG auditors.

Williams said he subsequently referred the alleged OIG intimidation of Butterfield to then Deputy IG Eugene Wazily sometime in early September 2006, weeks after he first learned of the possible intimidation from Brooks on August 14, 2006. He said the delay occurred because he considered it an informal matter since the information he received from Brooks was third- or fourth-hand information, at best, and not directly from Butterfield. Williams added the only person who mentioned the issue to him at all was Brooks, no one else.

Williams observed that the leadership vacuum within FAS and the ITAC at the time created an environment in which it was possible the OIG did in fact intimidate Butterfield or other employees. He, however, stated it was most likely a simple case of a strong-willed auditor holding out longer than the contracting officer. Williams noted that he has never heard of any specific alleged intimidation scenario other than Butterfield's (Exhibits 4 and 6).

Patricia Brooks, former ITAC Director:



(Exhibits 7 – 8).

FOIA EXEMPTION b5, b6, 7C

Andrew Patchan, GSA Assistant IG for Audit:

Patchan said he attended a late August meeting with Administrator Doan, Kevin Bufford (former GSA OIG General Counsel) and others whom he could not remember, in which Administrator Doan demanded to know more not only about the situation with Sun but about OIG activities overall. [Agent Note: The late August meeting Patchan referred to occurred on August 29, 2006.] In addition, he recalled Administrator Doan commenting during the meeting that the contracting officer handling the Sun contract was so stressed out by the OIG's audit(s) of the contract and referral to DOJ that he might have to be replaced; he noted she never or specifically used the term "intimidation" or identified the contracting officer by name.

Patchan advised that Wazily attended a meeting, in or about September 2006, with senior GSA management where Williams told Wazily he thought auditors were intimidating the contracting officers, specifically Butterfield. Patchan said that Wazily referred the complaint to him and directed him to look into it. He recalled that it was not treated as a formal complaint or a hot issue, just simply one of many other things going on at the time that he (Patchan) needed to follow-up on. Patchan said he contacted Althea Kireilis of the Office of the Chief Acquisition Officer to begin looking into whether the allegation had any merit. Kireilis referred Patchan to Patrick Conley of the FAS Commercial Acquisition Policy Branch, who agreed to look into the matter. Patchan said Conley advised him in either October or November 2006 that he spoke with a number of contracting officers, including the contracting officer in question, i.e.

Butterfield, and that the contracting officer advised him (Conley) that there was no truth to the allegation and that the auditors had always displayed a professional demeanor (Exhibit 3).

Michael Butterfield, Contracting Officer, FAS:

Butterfield advised he was the ITAC contracting officer responsible for the Sun contract from February 2006 to August 2006. [REDACTED]

[REDACTED] Butterfield said that at no time did the auditors attempt to intimidate or threaten him [REDACTED]

[REDACTED] and maintained that he was not intimidated or threatened by the auditors (Exhibits 9 – 10).

Sharon Chen, Attorney, GSA OGC:

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Sharon Chen, who is one of three attorneys assigned to support the ITAC and worked with Butterfield on the Sun contract, [REDACTED]

[REDACTED] (Exhibit 11).

Sheredia Brown, ITAC Branch Chief:

Brown, an ITAC supervisory contracting officer and branch chief who was Butterfield's direct supervisor, stated [REDACTED]

[REDACTED] (Exhibit 12).

FOIA EXEMPTION b5, b6, 7C

Teresa Henderson, ITAC Division Chief:

Henderson, an ITAC supervisory contracting officer and division chief whom Butterfield reports to through Brown, said [REDACTED]

[REDACTED] (Exhibit 13).

Robert Bourne, former ITAC Deputy Director:

FOIA EXEMPTION

b5, b6, 7c

Bourne, who is Butterfield's brother-in-law and a former ITAC deputy director, said [REDACTED]

Patricia Pierson, former ITAC Director:

Pierson, who was the ITAC director until March 2006 when Brooks replaced her, explained [REDACTED]

[REDACTED] (Exhibits 15).

Jeffrey Koses, Director, Office of Acquisition Operations, FAS:

Koses said that, between 2005 and 2006, he held three different positions simultaneously within FSS and then FAS, which afforded him some involvement with the Sun contract. Koses advised that [REDACTED]

[REDACTED] Koses stated they (i.e. FAS management) continue to hear of generalized non-specific allegations concerning possible OIG intimidation, which they are attempting to address through the IG Working Group (includes OIG and contracting officer representatives) and the issuance of policy guidance such as the Procurement Information Notice (issued in September 2006 to clarify the role of contracting officers and auditors) (Exhibit 1).

David Drabkin, GSA Chief Acquisition Officer (Acting):

Drabkin, the former FAS director of acquisitions who had oversight responsibility for all FAS contracting officers, recalled that, in June or July 2006, [REDACTED]

[REDACTED]

(Exhibit 16).

FOIA EXEMPTION b5, b6, 7c

John Phelps, GSA Chief of Staff:

Phelps recalled several contractors complained about the OIG's conduct during an August 17, 2006, meeting he and Administrator Doan had with representatives from GSA's top ten contractors participating in the Schedules program. He stated they claimed the OIG was heavy-handed in its dealings with the contractors and GSA's contracting officers. Phelps believed the primary complainants were IBM, Dell, and Lockheed-Martin. Phelps said the first time he heard of the alleged intimidation regarding the Sun contract specifically was during an October or November 2006 meeting involving Administrator Doan, Miller, and Williams; it was not until the Committee hearing until he learned of Butterfield's name. He recalled they discussed the numerous complaints from employees, contractors, etc. regarding OIG intimidating/bullying behavior. Phelps commented that Williams cited the possibility that the OIG had threatened one of his employees by suggesting the employee "would never work in this town again" if they did not cooperate with the OIG. He recalled Administrator Doan subsequently asked the OIG to do an internal assessment regarding the intimidation allegation and to conduct an internal review of the policies, procedures, and culture of the OIG to assess how they were dealing with the companies (Exhibit 17 – 18).

Herman Caldwell, Supervisory Contracting Officer, FAS:

Caldwell said he served as the ITAC's lead contracting officer for the Sun contract from February 2005 when he assumed control of the contract from his subordinate, Robert Overbey, until late January / early February 2006 when Butterfield replaced him. He denied the auditors attempted to or actually intimidated him during the contract negotiations.

[REDACTED] (Exhibit 19).

James Corcoran, GSA Deputy Assistant IG for Contract Audits:

Corcoran, the former audit manager that managed the Sun contract audits, stated he

[REDACTED]

Glenn Merski, GSA Region 3 IG for Audit:

Glenn Merski, the regional IG for audit that oversaw the Sun contract audits, said he

[REDACTED]

(Exhibit 22).

FOIA EXEMPTION b5, b6, 7C