



United States Department of State

Washington, D.C. 20520

September 29, 2010

Via Federal Express

William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RE: OSC File No. DI-09-0222

Dear Mr. Reukauf:

On behalf of the Secretary, this is a further response to your letter of June 11, 2009.

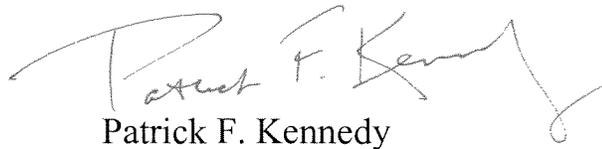
As you know, the Department responded initially to your June 11, 2009, letter by providing to you two Reports of Investigation (Reports) that concluded there is no basis for allegations received by your office of a violation of law, rule, or regulation, gross mismanagement, and a gross waste of funds in connection with the construction of the U.S. Embassy in Managua, Nicaragua, and the installation and maintenance of air conditioning system chillers, made by the York Products Division of Johnson Controls, Inc. The Secretary delegated to me authority to review and sign the reports pursuant to Delegation of Authority No. 198 to the Under Secretary for Management.

Pursuant to further discussions with your office, the Department understands that the Office of Special Counsel (OSC) is required by statute to post the Department's response to the allegations on the OSC website. As the Reports include sensitive information bearing on the security of the Department's facilities overseas, and in response to the referenced further discussions with your office, the Department is forwarding by this letter two Investigative Summaries that do not contain sensitive information and which

it understands will be posted on the OSC website instead of the previously provided Reports (which include attachments that the Department further understands will not be posted on the website). The Department understands that the Reports provided initially will be forwarded to the White House, the U.S. Congress, and the complainant.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick F. Kennedy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Patrick F. Kennedy

Attachments:

As stated.



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

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U.S. Department of State (DOS) Office of Inspector General (OIG)
Office of Investigations (INV)
Investigative Summary Concerning Office of Special Counsel June 11, 2009, Referral
For Investigation (OSC File No. DI-09-0222) to the U.S. Department of State

1. Summary of Information with respect to which the investigation was initiated:

This investigation was initiated based upon information received by Secretary of State Hillary Rodham Clinton from Associate Special Counsel William E. Reukauf, U.S. Office of Special Counsel (OSC). Reukauf referred a whistleblower disclosure made by former Program Analyst Robert M. Baggan, Bureau of Overseas Buildings Operations (OBO), U.S. Department of State (DoS). Baggan alleged that DoS employees failed to provide proper oversight of the construction of the U.S. Embassy in Managua, Nicaragua (Embassy Managua). He specifically stated that OBO Project Director (PD) improperly issued the Notice of Substantial Completion (Notice) to the building contractor (contractor), even though the building was not completed. He also alleged that DoS employees failed to hold contractors accountable for a substantial amount of unfinished or defective work and that this conduct constituted a violation of law, rule, regulation, gross mismanagement, and a gross waste of funds.

2. Description of the conduct of the investigation:

This investigation was conducted from August 14, 2009, to December 7, 2009, in accordance with the Quality Standards for Investigations promulgated by the Council of Inspectors General on Integrity and Efficiency. The Office of Investigations interviewed Mr. Baggan, reviewed all of the documentary evidence provided, and interviewed all Department employees alleged to have engaged in misconduct. The Office of Investigations also requested and reviewed Department of State documents that are relevant to the investigation.

3. Listing of any violation or apparent violation of law, rule or regulation:

(a) Whether the OBO Project Director improperly issued the Notice of Substantial Completion in violation of 5 USC § 1213 – Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters.

(b) Whether DoS employees failed to provide oversight and hold contractors accountable for a substantial amount of unfinished or defective work in violation of 5 USC § 1213.

4. Summary of findings:

This investigation did not uncover any evidence that the Project Director (PD) improperly issued the Notice of Substantial Completion (Notice) for the Embassy Managua construction project in July 2007. Additionally, the investigation did not uncover any evidence to support the allegation that DoS employees did not properly monitor the progress of the project; and the contractor was held accountable for the completion of all requirements specified in the contract.

The investigation also found that at no time throughout the construction process were contractors unsupervised or unknowing of what tasks were to be completed and DoS employees never failed to provide proper oversight or hold the contractor accountable for any unfinished or defective work. All work was completed and a punch list was prepared to ensure all questionable items were fixed, corrected, or replaced prior to occupancy of Embassy Managua.

5. Summary of Evidence:

The PD signed the Notice on July 18, 2007, with the concurrence of his/her direct supervisor, the Senior Project Executive (SPE). The PD said s/he had the authority as the PD to issue the Notice under his/her own discretion, but since this was his/her first assignment as a PD for a major construction project, s/he consulted closely with the SPE and they made the decision to issue the Notice together. The SPE stated at the time the Notice was issued, all the major building systems were installed and had been tested and certified. The SPE acknowledged at the time the Notice was issued the project was greater than 120 days behind schedule, but the issuance of the Notice depended on the stage of completion of the project, not how many days the project was behind schedule. Additionally, the SPE said the issuance of the Notice did not prevent DoS from assessing liquidated damages against the contractor; it only stopped the clock as to the maximum number of days for which the contractor could be assessed liquidated damages. The SPE said liquidated damages are assessed and issued by the contracting officer. The Managua Embassy contracting officer did not assess liquidated damages against the contractor because the PD advised him/her that the majority of the delays with the completion of the project were as a result of change orders and modifications requested by the government.

The PD originally scheduled Embassy personnel to move into the New Embassy Compound (NEC) on August 30, 2007. In mid-August 2007, the Facilities Manager reported directly to his/her OBO supervisor in Washington, DC, a Supervisory Facility Management Specialist (Management Specialist), that the Embassy's major operating systems, to include the sewer, fire alarm, fire protection, fuel system, elevators, cooling towers, air handling units, power monitoring, and lightning protection were not operating properly.

In response to the Facility Manager's complaints, the Management Specialist, along with OBO Program Analyst Robert Baggan, traveled to Managua on August 29,

2007, to determine the actual readiness of the building for occupancy. The trip determined the sewer system infrastructure had been complete for over two months, but the training provided by the contractor was technically incomplete and no one from OBO witnessed the testing of the water treatment plant. There were 13 trouble calls on the main fire alarm panel and the system's accreditation to Congress had not been achieved. All punch list items for the elevators had been completed, inspected, and approved by facilities management personnel. There were no issues with the cooling towers that affected the operation of the chilled water system. The air-handling units had been commissioned. One system was not operational, the panels were not completely wired, and all "other communications systems" were not commissioned, which was required before the controllers and other components could be energized. The power-monitoring technician was on site and the system was scheduled to be operational by September 7, 2007. Parts were missing to complete the lightning protection system, but were due to arrive the week of August 27, 2007.

The SPE acknowledged there were "glitches" in all these systems, but maintained that it was still proper to have issued the Notice and the building could have been occupied by Embassy personnel by August 30, 2007. The Notice was accompanied by a punch list of work that required completion before the DoS would formally accept the building from the contractor. The SPE said it was common on construction projects to occupy NECs before all the major systems were operating at one hundred percent levels. Based on the Facility Manager's concerns, the Ambassador decided not to occupy the NEC until all the remaining punch list items had been completed and he also wanted both NEC and New Embassy Annex (NOX) personnel to move into their new facilities at the same time. The SPE said that was not the standard practice and it was, in fact, not possible to have all the punch list items completed before occupancy, because some systems required occupancy before they could be adjusted and ultimately function properly.

Due to the problems identified on the August 29 through 31, 2007 trip, the SPE, the Management Specialist, and Baggan returned to Embassy Managua for the period September 11 through 16, 2007, to work with post to identify all critical project completion requirements and deliverables essential to post's occupancy of the new facility. The team observed good progress since their August 2007 visit, but there were still numerous punch list items, including systems commissioning, training, and operations and maintenance deliverables that had not been completed. The team and post agreed the final commissioning of a certain system would be completed immediately following building occupancy.

The Management Specialist made a third trip to Embassy Managua for the period October 23 through 26, 2007 in order to conduct a review of the necessary NEC turn over materials, documents, and punch list and equipment commissioning status. The Management Specialist observed good improvement toward project completion compared to the September trip. The NEC electrical systems had been commissioned, the heating, ventilating, and air conditioning building systems were in the process of being commissioned by the construction and commissioning

mechanical engineer, and the punch list was at a manageable level for the projected post move in date of November 14, 2007.

All Embassy personnel moved into the NEC and NOX on November 14, 2007. While the investigation determined there was disagreement among post personnel and OBO Washington officials regarding the issuance of the Notice, as well as when the NEC could have been occupied by Embassy personnel, all individuals involved with the project agreed that when Embassy personnel moved into both the NEC and NOX in November 2007, both facilities were functioning properly.

Details of Investigation:

The Embassy Managua construction project consisted of two contracts. The first was for the construction of the NEC, which was awarded to the contractor on September 21, 2004, as a design and build contract in the amount of \$59,188,830 with an initial completion date of October 20, 2006. Over the life of the contract, the completion date was extended by 271 days to July 21, 2007. The second was for the construction of the New Embassy Annex (NOX), which was awarded to the contractor on September 23, 2005, in the amount of \$10,725,008 with an initial completion date of May 03, 2007. Over the life of this contract, the completion date was extended by 119 days to August 30, 2007.

On July 18, 2007, the PD issued the Notice, which certified that the work specified in the contract was substantially complete and only minor items, listed on an accompanying punch list, remained to be accomplished or corrected. As the PD, it was the PD's responsibility to determine, based on his/her experience and expertise with construction projects, when to issue the Notice. However, the PD consulted and discussed the issuance of the Notice with his/her direct supervisor, the SPE, and they made a collaborative decision on when to issue the Notice (Exhibit 1).

The PD understood "substantial completion" to mean the stage in the project when beneficial occupancy could occur and the facility could be used for its intended purpose. S/he explained that there were nine buildings associated with the construction project that were completed and turned over for occupancy in various stages. One of the Compound Access Control (CAC) areas (a CAC is a screening area for admittance into the compound) was occupied early in the project. The PD stated that substantial completion could be granted if: 1) there was use of part or all of the facility, or 2) the owner granted it to the builder.

The PD explained that construction delays were caused by government requested change orders and modifications, the weather, the local labor workforce walking off the site, and Diplomatic Security's (DS) accreditation process. The PD worked at the project site daily and interfaced with the contractor throughout the construction of both the NEC and NOX. S/he could not speak to any issues concerning a lack of oversight after his/her departure in August 2007, but a lack of oversight was never brought to his/her attention and s/he was never criticized by the Contracting Officer

or any other OBO officials for not providing proper oversight during his/her tenure on the project.

The PD said that while s/he was involved with the construction project, no liquidated damages were ever imposed on the contractor. Further, the PD advised that as the PD s/he could not assess liquidated damages against the contractor without the agreement and involvement of the Contracting Officer. All the scheduling delays associated with the project were resolved without assessing liquidated damages (Exhibit 2).

The SPE explained that construction delays were common and it was not unusual for contractors to miss schedule expectations or deadlines. There were changes to Embassy Managua's original Request for Proposal (RFP), which caused a major adjustment to the gross square media area on the project. One NEC delay was from the addition of a new government tenant, the Global Affairs (GA) Section. This major change added a significant number of days to the project because GA wanted more space than originally contracted. Another delay was the Ambassador's decision not to move all Embassy personnel into the NEC until construction had been completed on the NOX as well. The Ambassador wanted both NEC and NOX personnel to move into their new facilities at the same time in order to have only one move.

The SPE explained that substantial completion was an objective opinion and construction projects were never 100% completed when a Notice is issued. The issuance of the Notice meant that the property could be occupied or used for its intended purpose, but some installations still needed to be completed or corrected. The SPE confirmed that s/he worked closely with the PD concerning the issuance of the Notice and it was a collaborative effort between them and in his/her opinion was issued at the proper time. The SPE stated that prior to the issuance of the Notice, some Embassy personnel had already moved into the NEC and took occupancy of certain parts of the facility.

The SPE said at the time the Notice was issued, the NEC and NOX were not ready for full occupancy because the installation of certain components had not been completed. Component installations were coordinated by post and completed by the end of the project, but were not required for the issuance of the Notice. Embassy Managua was about one month behind schedule due to change orders and modifications requested by the government. The SPE said release of the final payment to the contractor would never have been authorized unless all of the work had been completed.

The SPE was asked specifically about former Program Analyst Robert Baggan's statement "that liquidated damages were going to be assessed." S/he explained that Contracting Officers have the right to assess liquidated damages whenever projects are late. It is a mechanism placed in all contracts used to make the government whole if a contractor is found to be negligent or late on project completion dates. Liquidated damages can be assessed based upon the number of days a construction project is late

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until the day the Notice is issued. Contractors can still be assessed liquidated damages after the Notice is issued for the number of days the project was late before the Notice was issued. For Embassy Managua, the contracting officer in the Bureau of Administration, Office of Logistic Management (A/LM) would have assessed any liquidated damages. However, if there were any contract change orders or modifications, then any liquidated damages would have been negotiated and a settlement would have been reached through one contract modification.

The SPE said for all NEC projects, Project Performance Reviews (PPR) were prepared monthly from information submitted by PDs to the Construction Executive in Washington, DC. The PPRs contained information concerning the project's scope, issues, and comments on the progress of the project that may have occurred during the month. They were color coded to highlight to management in Washington any project delays. PPRs colored in red indicated that the project was greater than 120 days behind schedule. PPRs colored in yellow indicated that the project was behind schedule by less than 120 days, but that it could still be brought back on schedule. The PPRs also contained an accountability chart that tracked the financial aspects of the projects.

The SPE acknowledged that Embassy Managua's PPRs for May 2007, June 2007, and July 2007 were color coded yellow, yellow, and red, respectively. Although the red coded July PPR indicated that when the Notice was issued on July 18 the project was more than 120 days behind schedule, it had no bearing in determining if liquidated damages were going to be assessed against the contractor, it only stopped the clock as to the total number of days that the contracting officer could assess for liquidated damages. It also had no bearing on the issuance of the Notice because that was dependant on the actual stage of completion of the project, not how many days the project was behind schedule.

At final completion, Embassy Managua was about one month behind schedule; however, The SPE advised that even if construction was completed on time, Embassy personnel would not have moved into the new Embassy because construction of the NOX was not completed and the Ambassador was adamant that no personnel would move in until all construction was completed on both projects. The SPE said the Ambassador exceeded his authority and was "out of line" by delaying the move in order to have all punch list items completed. The SPE said that was not the standard practice and it was in fact not possible to have all the punch list items completed before occupancy, because some systems required occupancy before they could be adjusted and ultimately function properly.

At the time the Notice was issued, all major systems were operational and working. There were glitches that required equipment to be fixed, but the SPE said that would not have been justification for the Notice not to have been issued. In addition, several areas were occupied, such as the OBO field office, the Main CAC, and the Service CAC.

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The SPE provided a memo to the now-former OBO Director detailing why the Notice was issued on July 18, 2007. These factors included that all major systems initial start up had occurred and that they remained operational; the government took beneficial occupancy of the Controlled Access Area floors on June 25, 2007; tenant agencies took possession of their upper-level suites and commenced prime mission equipment installations; as of July 4, 2007, post took permanent beneficial occupancy of the Main Compound Access Control building to control access to all buildings located inside the Embassy Managua compound; and OBO and post shared occupancy of the Service Compound Access Control to control access to the construction site and the government took partial occupancy of the GSO shops building to serve as the OBO Managua field office.

Upon issuance of the Notice, a punch list was prepared that listed the remaining work requiring completion before the Embassy was ready for full occupancy. In all NEC projects, there is a 60-day period after the issuance of the Notice for the contractor to complete the punch list. In addition to completion of the punch list, certain equipment must be installed, all major Embassy systems have to be tested, DS must complete an accreditation inspection of the NEC to certify to Congress that the design has met all the required security standards, and the Under Secretary for Management has to issue a Certificate of Occupancy. The PD believed this process had progressed to a point where full occupancy could occur and told the Ambassador that s/he had scheduled the remaining Embassy personnel to move into the NEC on August 30, 2007.

Embassy Managua's Facilities Manager disagreed and sent an e-mail message in mid-August 2007 directly to his/her OBO supervisor in Washington, DC, the Management Specialist, that the Embassy's major operating systems, to include the sewer, fire alarm, fire protection, fuel system, elevators, cooling towers, air handling units, power monitoring, and lightening protection were not operating properly.

In response to the Facilities Manager's complaints, the Management Specialist, along with OBO Program Analyst Robert Baggan, traveled to Managua on August 29, 2007, to determine the actual readiness of the building for occupancy. The trip determined the sewer system infrastructure had been complete for over two months, but the training provided by the contractor was technically incomplete and no one from OBO witnessed the testing of the water treatment plant. There were 13 trouble calls on the main fire alarm panel and the system's accreditation to Congress had not been achieved. All punch list items for the elevators had been completed, inspected, and approved by facilities management personnel. There were no issues with the cooling towers that affected the operation of the chilled water system. The air-handling units had been commissioned. One system was not operational, the panels were not completely wired, and all "other communications systems" were not commissioned, which was required before the controllers and other components could be energized. The power-monitoring technician was on site and the system was scheduled to be operational by September 7, 2007. Parts were missing to complete the lightning protection system, but were due to arrive the week of August 27, 2007.

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Due to the problems identified on the August 29 through 31, 2007 trip, the Management Specialist and Baggan, as well as the SPE, returned to Embassy Managua for the period September 11 through 16, 2007 to work with post to identify all critical project completion requirements and deliverables essential to post's occupancy of the new facility. The team observed good progress since their August 2007 visit, but there were still numerous punch list items, including systems commissioning, training, and Operations and Maintenance Office of OBO deliverables that had not been completed. The team and post agreed the final commissioning of one system would be completed immediately following building occupancy.

The Management Specialist made a third trip to Embassy Managua for the period October 23 through 26, 2007 in order to conduct a review of the necessary NEC turn over materials, documents, and punch list and equipment commissioning status. The Management Specialist observed good improvement toward project completion compared to the September trip. The NEC electrical systems had been commissioned, the heating, ventilating, and air conditioning building systems were in the process of being commissioned by the construction and commissioning mechanical engineer, and the punch list was at a manageable level for the projected post move in date of November 14, 2007.

The Management Specialist was interviewed and confirmed that s/he traveled to Embassy Managua in August 2007 because of complaints from the Facilities Manager, to observe the situation along with Program Analyst Robert Baggan, of OBO's Internal Review and Operations Research, but s/he did not know specifically why Baggan was sent with him/her. The Management Specialist stated that based on his/her observation, the project had inadequate government oversight and there was a lack of insistence by the government to make the contractor perform properly. Upon his/her return, s/he met with the OBO Director to discuss the problems s/he observed at Embassy Managua. He explained that these problems included the following: improperly labeled electrical panels, wiring that was not set up for the fire protection pumps, and electrical circuits that were unlabeled. The OBO Director directed the Management Specialist to return to continue to monitor the construction progress. The Management Specialist advised that the problems s/he observed during his/her first visit to Embassy Managua in August 2007 had improved dramatically when s/he returned for his/her second visit, approximately three weeks later, in September 2007. The Management Specialist said ultimately, all the work was completed. There was a long punch that needed to be completed before occupancy, but the items on the punch list did not inhibit the proper functioning of the Embassy. With regard to the Notice being issued too early, the Management Specialist stated that the PD had his/her own interpretation of how quickly the punch list items could be addressed after s/he issued the Notice. The PD was on-site daily and it was his/her judgment as to when s/he should have issued the Notice.

An Information Memo for the OBO Director drafted by the SPE, provided information on major factors contributing to the delay with regard to moving into Embassy Managua. It stated that move-in delays were caused by the relocation of GSO workstations, contractor resources were redirected because of significant tenant-requested changes deemed critical to Embassy operations; and post advised OBO that they wanted to move in after all punch list items were completed.

Although there were disagreements between internal offices within OBO, progress towards completion of the Embassy continued and DS completed their Final Conformance Inspection. The overall security of the project was considered excellent with careful adherence to the construction security plan and accepted security practices. All specific items identified either were completed or had an anticipated completion date by August 24, 2007.

On August 14, 2007, DS issued their Notice of Full Substantial Compliance based on their accreditation inspections of Embassy Managua that were conducted between June 22, 2007 through July 6, 2007 and August 5, 2007 through August 11, 2007. The inspections covered all physical, technical, and electronic criteria in accordance with 12 FAM 360 and determined that the project was in substantial compliance. The notice also identified a small number of physical security discrepancies that required correction prior to occupancy.

On October 24, 2007 the Certificate of Occupancy was issued by DOS's Under Secretary for Management Henrietta H. Fore. The issuance of the Certificate of Occupancy was the final requirement in the building acceptance process and attested to the substantial completion of construction and successful testing and validation of the major building and communication systems.

All Embassy personnel moved into the NEC and NOX on November 14, 2007. While the investigation determined there was disagreement among post personnel and OBO Washington officials regarding the issuance of the Notice, as well as when the NEC could have been occupied by Embassy personnel, all individuals involved with the project agreed that when Embassy personnel moved into both the NEC and NOX in November 2007, both facilities were functioning properly.

The investigation also found that at no time throughout the construction process were contractors unsupervised or unknowing of what tasks were to be completed and DoS employees never failed to provide proper oversight or hold the contractor accountable for any unfinished or defective work. All work was completed and a punch list was prepared to ensure all questionable items were fixed, corrected, or replaced prior to occupancy of both the NEC and NOX.

The Contract Specialist stated that DoS employees regularly interfaced with the contractors on the job site and s/he was unaware of any problems regarding DoS's oversight of the contractor. S/he said it was not true that the contractor was not held accountable for their work. The Contract Specialist said the previously mentioned

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punch list showed everything the contractor had to correct or finish before Embassy Managua could be considered completed. Additionally, after all Embassy personnel moved into the NEC in November 2007, s/he has not received one complaint about the quality of the construction of the facility.

The Embassy Managua Contracting Officer received information from the PD throughout the construction project that the government had requested several major change orders and contract modifications that added many months to the completion of the contract. S/he explained that as the contracting officer it was his/her decision to assess liquidated damages, based on construction delays, and s/he decided not to do so because many of the delays were as a result of the changes in the contract requested by the government.

August 16, 2010

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United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

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U.S. Department of State Office of Inspector General Office of Investigations
Investigative Summary Concerning Office of Special Counsel June 11, 2009, Referral
For Investigation (OSC File No. DI-09-0222) to the U.S. Department of State

1. **Summary of Information with respect to which the investigation was initiated:**

This investigation was initiated based upon information received by Secretary of State Hillary Clinton from Associate Special Counsel William Reukauf, U.S. Office of Special Counsel. Reukauf referred a whistleblower disclosure made by Robert M. Baggan, formerly a Program Analyst in the Office of Internal Review and Operations Research (IROR), Overseas Buildings Operations (OBO) at the Department of State (Department). Baggan alleged that OBO employees failed to properly manage the installation and maintenance of air conditioning chillers made by a contractor. These chillers are in use at an estimated 80 U.S. embassies worldwide. In addition, Baggan alleged the contractor's routinely substituted water-cooled chillers (for air-cooled ones) on embassy projects without authorization or written change orders from Department Contracting Officers (CO).

2. **Description of the conduct of the investigation:**

This investigation was conducted from August 14, 2009, to December 7, 2009, in accordance with the Quality Standards for Investigations promulgated by the Council of Inspectors General on Integrity and Efficiency. The Office of Investigations interviewed Mr. Baggan, reviewed all of the documentary evidence provided, and interviewed all Department employees alleged to have engaged in misconduct. The Office of Investigations also requested and reviewed Department of State documents that are relevant to the investigation.

3. **Listing of any violation or apparent violation of law, rule or regulation:**

- 1) Whether OBO officials committed gross mismanagement in violation of 3 FAM 4138 (11) - Conduct which clearly shows poor judgment or lack of discretion, which may reasonably affect an individual or agency's ability to carry out its responsibilities or mission.
- 2) Whether the contractor committed product substitution, in violation of 18 USC § 287 - False Claims.

4. Summary of findings:

The investigation determined that while OBO officials could have better managed the projects in question, possibly by improving communication between different branches, no evidence was discovered suggesting any individual or group committed gross mismanagement related to the installation and maintenance of chillers at United States embassies. Overall, OBO officials took significant steps to address the various problems that developed with the contractor's chillers in the 2005-2007 timeframe.

The investigation also determined the contractor did not commit product substitution, as water-cooled chillers were allowable under the OBO specifications in place from 2001 until July 30, 2007. In addition, the contractor was not the prime contractor on the NEC projects and only manufactured and sold the chiller as a subcontractor. The company, therefore, had no decision-making authority as to what type of chiller system would be installed at a particular embassy, so it would not have been able to switch out the type of chiller system to be used. Also, OBO officials approved the chiller systems at various points in the construction process and ultimately "accepted" the embassies when construction was complete. Not one OBO official interviewed reported that the contractor committed product substitution. Finally, two general contractors stated they would have no financial motive to install one type of chiller system over another as the cost differential of procuring and installing water-cooled chillers versus air-cooled chillers is not substantial.

Details of Investigation:

Interview of the Chief of Architectural Engineering Branch, Bureau of Administration (A), Logistics Management (LM), Office of Acquisitions Management (AQM)

On September 4, 2009, the Chief of the Architectural Engineering Branch, Bureau of Administration (A), Logistics Management (LM), Office of Acquisitions Management (AQM) (Chief) was interviewed and stated that a few years ago the Department encountered problems with the contractor's chillers related to compressors freezing up and not working properly. According to the Chief, this may have resulted from the contractor's using a new design or a system change. In addition, s/he stated chillers are complex items and, as a result, they may be inherently problematic. Once the problems were identified the prime contractors worked with the contractor that made the chillers (the subcontractor) to fix the chillers and Department officials also began discussions with the contractor who manufactured the chillers to work through the issues. (Agent note: the Chief provided a letter, dated January 31, 2007, s/he sent to the President of the contractor documenting problems the Department was experiencing with "the contractor's air conditioning systems.")

Interview of Robert Baggan, SA-39, Arlington, VA.

On August 14, 2009, Robert Baggan was interviewed and stated the Managing Director was aware that chillers were failing at U.S embassies around the world and did nothing to

remedy the situation. Baggan stated that the OBO MEB Chief wrote a "White Paper" regarding the chiller issue in January 2007.

Interview of the OBO MEB Chief, SA-6, Arlington, VA.

On September 9, 2009, the OBO MEB Chief was interviewed and stated the chiller failures in Africa (and other locations) and the knowledge that water-cooled chillers were being installed in embassies located in the desert eventually led to the OBO MEB Chief and his/her staff authoring a White Paper, dated July 27, 2007. The OBO MEB Chief stated his/her decision in the White Paper was to go with only air-cooled chillers from that point forward. The OBO Director agreed and signed off on the White Paper on July 30, 2007. Overall, the White Paper contains nine recommendations.

The OBO MEB Chief also stated s/he made a "big stink" about the product warranty on the contractor's chillers. A critical issue arose because the starting point of the warranty was never designated under the design-build construction model. The contractor's position was the warranty started once the equipment left the factory. The OBO MEB Chief's position was the warranty began once the equipment was started up for operation at the embassy. The OBO MEB Chief stated the Department's COs did not agree with his/her position on the chiller warranty. Eventually, however, the OBO MEB Chief was successful in obtaining five-year warranties on chiller compressors, which is the industry standard.

Interview of the OBO Managing Director, SA-6, Arlington, VA

On October 26, 2009, the Managing Director was interviewed and stated when the chiller problems arose in 2007, s/he directed his/her mechanical engineers to document them in a White Paper that incorporated a complete, objective review and recommendations to solve the problems. The Managing Director stated the White Paper documented "systemic problems" with the contractor's chillers and s/he agreed with the White Paper's nine recommendations. S/he said the main thrust of the paper was mandating the use of only air-cooled chillers from the date of the paper onward.

The Managing Director stated the NEC in Bamako, Mali, was "the worst moment" as the embassy had to shut down for a month due to the failure of two the contractor's water-cooled chillers (in the spring and summer 2007). In general, the Bamako crisis "gave teeth" to the White Paper as "no one wanted another Bamako to occur again." According to the Managing Director, the White Paper prompted OBO to procure a standby air-cooled chiller ready to be shipped to a potential crisis area. The White Paper also caused OBO to more closely monitor the performance of water-cooled chillers and its design engineers are more engaged in the Request for Proposal (RFP) preparation and submittal. The Managing Director also stated OBO has been able to "extract some relief" from the contractor as the OBO MEB Chief has been aggressive in meeting with contractor

representatives and documenting the problems OBO has experienced with the contractor's chillers. The Managing Director said s/he did not believe the contractor was trying "to dump a bad product" (water-cooled chillers) on OBO.

The Managing Director was informed of Baggan's claim that once the problems with the water-cooled chillers became known, all OBO construction on NECs should have been immediately stopped and, because they were not, OBO mismanaged the issue. The Managing Director replied s/he did not agree and said OBO moved 20,000 people "out of harm's way" (as the NECs were completed), the chillers were operable and are currently operating, and OBO received some concessions from the contractor and the White Paper documented the way forward. In addition, there is a plan to replace the water-cooled chillers at various NECs, although funds have not yet been dedicated to do this. The Managing Director also stated s/he had not heard of any recent problems with chillers. S/he said a "fly-away" air-cooled chiller was sent to the NEC in Freetown, Sierra Leone (in March 2008).

The Managing Director's background and qualifications are as follows: s/he is a registered architect in the state of California and has a Bachelor of Science degree in architecture and a Master's degree in engineering management. S/he worked approximately ten years in the private sector, taught architecture at the University of Toronto's School of Architecture for two years, and then began employment with the Department in 1980 where s/he has been building embassies in some capacity since. At the peak, s/he had about 500 people working for him/her in OBO.

Telephone Interview of the former OBO Director

On September 11, 2009, the former OBO Director was interviewed and stated he was familiar with the chiller issues. He said the problems emanated with the contractor but advised it is not unusual to have problems with equipment on large-scale construction projects. The Director stated he did not actually recall signing the White Paper, although he understood the chiller issues and intended to correct the problem, which is what he instructed the OBO MEB Chief to do. When asked about a memorandum authored by the former Director, dated July 31, 2007, to numerous OBO and Department contracting officials directing them to ban the contractor from future OBO contracts, he replied that when the chiller issues came about, especially with a couple faulty chillers in Africa, he recognized the problem and wanted to correct it, which is why he sent the memo forward.

Review of White Paper

On September 4, 2009, the White Paper was provided by the Chief of the Architectural Engineering Branch, Bureau of Administration (A), Logistics Management (LM), Office of Acquisitions Management (AQM). It is titled, Embassy and Consular Facility Chiller Failures Need for Remedial Action. A review of the White Paper revealed the MEB thoroughly identified the problems that had been encountered with the contractor's chillers and also provided an extensive set of recommendations on how to address the issues. On September 9, 2009, the OBO MEB Chief was asked the status of the White

Paper's nine recommendations. His/her statements/answers are listed below in bold print (Exhibits 9 & 4A):

Recommendation 1: Eliminate the option to provide water-cooled (cooling tower) systems. This removes a portion of the problem from the equation and eliminates the use of hazardous chemicals. **Implemented.**

Recommendation 2: Adopt and immediately publish OBO Mechanical Code Supplements, proposed by OBO/Project Execution (PE)/ Office of Design & Engineering (DE)/MEB. Attachment C contains the RFP documents that need to be included in the FY 2007 NEC/New Consulate Compound contract awards. **Implemented. This "adds teeth" to the contract documents and MEB can now tell the contractor they are not conforming to the OBO Mechanical Code Supplements if that is the case.**

Recommendation 3: Expand the design review checklist to ensure problems and failure modes set forth in above are eliminated in engineering reviews. **MEB is in the process of obtaining an expanded review checklist.**

Recommendation 4: Have government approval at submittal phase, requiring a go/no-go decision, commensurate with certification. **MEB is now doing this, as a contractor cannot order chiller equipment until MEB grants permission. This is a big step in the right direction.**

Recommendation 5: Develop a "fly-away" chiller package that would be available for immediate deployment. **Implemented. This was helpful and has been used (in Freetown.)**

Recommendation 6: Direct involvement of DE/MEB is required in the selection, approval of shop drawings. **S/he is concerned about this as shop drawings don't always come to the MEB as they should. This is an in-house thing MEB and OBO need to get better in.**

Recommendation 7: Have DE/MEB provide field oversight of installation and commissioning of HVAC capital equipment. **This has been done for air conditioning, but MEB has not gotten there for the chiller start-ups. Historically, it has been required that the general contractor must be there, although this is like the "fox guarding the hen house." In the past, engineering and mechanical were not invited to post although this has improved somewhat. Still, though, MEB is generally not allowed, although they keep pushing for it.**

Recommendation 8: Begin a program to phase out all existing water-cooled chillers replacing them with energy efficient air-cooled chillers. **This has been done as all new projects from the date of the White Paper forward have air-cooled chillers. For the embassies and consulates that have water-cooled chillers, this is still a "wide open item. About 25% of the embassies have water-cooled chillers."**

Recommendation 9: Implement a global warranty management system as a part of the maintenance plan provided to OM/FAC. **DE/ME with OBO/RM/IRM has completed development of a BMIS Capital Equipment Inventory Module for tracking Chillers, Air Handling Units, and Boilers. Data entry and warranty enforcement are best addressed by OBO/CFSM.**

Interview of MEB Mechanical Engineer #1, SA-6, Arlington, VA.

On September 22, 2009, a MEB Mechanical Engineer (the MEB engineer #1) was interviewed and stated in the spring of 2007 a meeting was held between the contractor and Department officials concerning problems with the chillers. The MEB engineer #1 stated there were many angry people on the Department side and s/he told the contractor's representatives they had a "brand problem," to which they agreed. Baggan was present at the meeting and told the contractor they have a problem and warned they "may not be here in five to ten years" if they continue manufacturing the type of equipment provided to OBO. The MEB engineer #1 stated the contractor's representatives said during the meeting they would fix the experimental chillers.

Interview of the Program Manager, SA-39, Arlington, VA.

On October 14, 2009, the Program Manager (PM) was interviewed and stated the contractor came out with new products that had some durability issues. Once the defects became known, the contractor retrofitted the faulty products and replaced them at their own expense. More specifically, according to the PM, the Department was complaining about the contractor's chiller. This chiller had a capacity control valve issue (commonly known as the "slide valve"). Eight OBO locations in West Africa had "problematic" chillers and the contractor retrofitted all eight with parts or new compressors at the company's expense. The PM stated a new compressor can cost approximately \$50,000.

The PM stated the problems with the contractor's water-cooled chillers at the U.S. embassy in Bamako, Mali, were derived from two different causes. In one case, the embassy maintenance staff "froze up" the chiller by removing the refrigerant incorrectly. The second chiller stopped working in June 2007 after the motor failed. The contractor had extended the warranties on its products after the meetings with OBO and Department contracting officials, so the second chiller was still within warranty. In response, the contractor sent a replacement compressor at the company's expense to Bamako. DHL lost the compressor en route, so instead of the compressor reaching Bamako in three to four days, it took seventeen. After the chiller was restored to service in Bamako, the PM did not hear anything more from Department officials about the matter. S/he estimated the contractor spent \$150,000 to address the Bamako situation; including approximately \$50,000 on the compressor, \$40,000 on the shipping and another \$60,000 for travel and labor.

The PM stated that despite the various meetings with Department officials, there were never any financial claims by OBO to the contractor related to the contractor's water-cooled chillers. S/he also said the contractor would have a higher value sale if they sold

an air-cooled chiller unit verses a water-cooled chiller due to the higher cost of an air-cooled unit.

Electronic Mails from the PM

On November 10, 2009, the PM sent an electronic mail and spreadsheet stating the contractor spent an estimated \$600,000 retrofitting the chillers installed at various U.S. embassies. The company was not able to specifically identify how much was spent at each NEC, as the OBO retrofit costs were all lumped together.

On November 3, 2009, the PM sent an electronic mail and attachment containing a service bulletin the contractor released on January 22, 2004, related to the problems encountered with the style chillers at issue. The subject of the Bulletin is Slide Valve Assembly Replacement.

Interview of MEB Mechanical Engineer #2, SA-6, Arlington, VA

On October 8, 2009, MEB Mechanical Engineer #2 was interviewed and stated the U.S. embassy in Abuja, Nigeria, had problems with the contractor's water-cooled chiller, as did the embassy in Freetown, Sierra Leone, which eventually required the "fly-away" air-cooled chiller be shipped out as a replacement. In Abuja, the motors had to be changed out on the contractor's water-cooled chillers even before the general contractor had finished constructing the NEC. The MEB engineer #2 stated the general contractor was "really upset" because they had to pay the costs to fix the contractor's chillers as the general contractor's warranty was still valid.

Interview of MEB Mechanical Engineer #3, SA-6, Arlington, VA.

On October 2, 2009, MEB Mechanical Engineer #3 was interviewed and stated, "Everybody made improvements and changes" since the problems in Bamako erupted and OBO has not had "catastrophic" chiller issues of that magnitude since the summer of 2007. Problems have occurred, but never a situation where two chillers went down at once and OBO also now has a "fly-away" air-cooled chiller ready if any chiller problems develop. The MEB engineer #3 said many factors combined simultaneously to make the cooler situation in Bamako reach the crisis point. S/he does not think anyone "was malicious" in Bamako and everyone was on-site attempting to fix the problem, including the contractor's representatives. According to the MEB engineer #3, OBO did learn some lessons from Bamako and no one in OBO foresaw the problems that developed with the contractor's water-cooled chillers. S/he stated s/he did not think the contractor knew the problems were going to happen and proceeded to install the chillers anyway.

The MEB engineer #3 also stated OBO has the contractor's chillers, including air-cooled ones, all over the world. The MEB engineer #3 advised water-cooled chillers use less energy than air-cooled chillers and the contractor's water-cooled chillers are working well in South America. S/he said there are advantages to each type of chiller system and water-cooled chillers are "not evil systems;" they just do not work well for OBO. S/he

heard the contractor went to other embassy sites that had the type of chiller in Bamako that failed and replaced the components they thought were causing the problems. S/he stated the contractor has learned (from past chiller failures) and "they did try in Bamako," although s/he is still not pleased with the situation that occurred there. The MEB engineer #3 stated s/he does not have a lot of experience with equipment, including chillers, but his/her opinion varies somewhat from the other OBO engineers who hold the contractor more responsible than s/he does for the chiller problems that developed.

2) Whether the contractor committed product substitution, in violation of 18 USC § 287 – False Claims.

Interview of Robert Baggan, SA-39, Arlington, VA.

On August 14, 2009, Baggan was interviewed and stated OBO specifications for Embassy construction specifically require the use of air-cooled chillers as opposed to water-cooled chillers, which are subject to maintenance issues related to differences in the local water supply. According to Baggan, a subsidiary of the contractor is the subcontractor for chillers on most, if not all, NEC projects. Baggan alleged that the contractor routinely substituted water-cooled chillers on these projects without the appropriate authorization or written change order from the Department CO. Baggan stated that Contract Specialists specifically told him that none of the chiller substitutions had been authorized by COs.

Baggan stated in December 2007, he submitted a twenty-page paper proposing the Department survey construction projects worldwide and demand replacement of any water-cooled chiller that had been installed but not yet accepted. He stated his supervisor forwarded his report to the then-OBO Director with a two-page executive summary written by an IROR Program Analyst. According to Baggan, the summary addressed only the Managua situation and proposed that the Department request an extended warranty for the chiller located there.

Interview of the OBO MEB Chief, SA-6, Arlington, VA.

On September 9, 2009, the OBO MEB Chief was interviewed and stated per the design build model (from the year 2001 onward), it was not specified that OBO required air chillers be installed at the new embassies. The performance specifications only called for "an operable chiller system." The OBO MEB Chief stated his/her decision in the White Paper was to utilize only air-cooled chillers. The then-OBO Director agreed and stated, "Make it happen". (Agent Note: Reference Recommendation 1 from the White Paper above which eliminates the option to provide water-cooled chillers on future OBO projects.)

OBO Chiller Specifications 2001 to July 30, 2007

On September 16, 2009, INV asked the OBO MEB Chief to provide the OBO chiller specifications that were in place from 2001 until the issuance of the White Paper. Later that day, the OBO MEB Chief replied in an electronic mail with an excerpt from OBO's 2006 specification: OBO-ICS 2006 Overseas Building Operations - International Code Supplement General Regulations (Mechanical) Chapter 3, Section 313.6 Air cooled condensers, which states, "Air cooled condensers shall be used as the basis of design in lieu of systems using cooling towers. *For any chiller systems larger than 300 tons, provide life cycle analysis at 35% submittal to justify water cooled equipment selections.....*"

Interview of the Chief of the Architectural Engineering Branch, Bureau of Administration (A), Logistics Management (LM), Office of Acquisitions Management (AQM), SA-6 Arlington, VA.

On September 4, 2009, the Chief was interviewed and stated OBO specifications in the 2007 time frame allowed water-cooled chillers to be used at U.S embassies. In the 2008 acquisition year OBO changed the specifications so that air chilled coolers are now required at all U.S. embassies. The OBO MEB Chief was in charge of changing the chiller specifications.

Interview of the Contracting Officer (CO), SA-39, Arlington, VA.

On October 7, 2009, the CO was interviewed and stated s/he began work with the Department in 2000. S/he was previously a CO for the Environmental Protection Agency. The CO stated in June 2006 s/he was the Branch Chief of the Construction unit in A/LM/AQM and assigned four NEC contracts OBO had in West Africa (Bamako, Freetown, Conakry, and Yaoundé). All of these NECs were in various stages of final acceptance, or finished with negotiations underway to close out the contracts. In addition, the CO inherited on-going NEC projects in Managua, Port-au-Prince, and Panama City. All seven of the NECs were design built, firm fixed price contracts with water-cooled chillers installed on the premises.

The CO stated OBO specifications at the time allowed water-cooled chillers to be installed at the NECs. Additionally, the CO explained OBO accepted the general contractor's design proposal for all of the NECs and "knew what they were getting" (water-cooled chillers). S/he said that if OBO had gone to the CO and recommended not giving the contractor a Notice to Proceed (NTP) with the construction (as a result of the water-cooled chillers being installed), "we would have told the contractor to stop construction." In all the NEC projects the CO worked on, OBO did not request the NTPs not be issued. The CO advised that someone from OBO approved/accepted all of these NECs, and OBO should not have approved the 35% design submittal if they had problems. The CO concluded by stating both sides shared equal blame related to the water-cooled chiller problems and OBO officials are "trying to blame the contractor." The bottom line is that water-cooled chillers were allowed under the OBO specifications at the time. The CO said part of the problem could have been that one side of OBO

approved the water-cooled chillers, while the design and engineering branch did not want them.

Interview of the Contract Specialist, A/LM SA-39, Arlington, VA.

On September 14, 2009, a contract specialist in A/LM was interviewed and stated s/he has heard "nothing from Managua in terms of problems," and added, "Everything out there (in Managua) is fine; post got everything they were looking for." S/he explained that any malfunctions related to chillers at Embassy Managua would have led to the chillers not being accepted.

The specialist stated Baggan's allegations "don't make any sense at all." S/he said everyone on the embassy Managua project was very cautious until completion and the technical people performed a "fine job." S/he again stated that s/he "does not see a problem here at all." INV told the specialist that OBO officials, including the OBO MEB Chief, comprised a White Paper on the chiller topic with nine recommendations in July 2007. S/he replied by stating that if the OBO MEB Chief examined the issues closely and wrote a White Paper on how to fix the problems, s/he does not understand Baggan's contentions.

Interview of IROR Manager, SA-6, Arlington, VA.

On September 8, 2009, the IROR Manager was interviewed and stated that in or around November 2007, Baggan completed a report on the chillers. In the report, Baggan asserted that the OBO MEB Chief concurred with the report. However, when the IROR Manager contacted the OBO MEB Chief to confirm this, the OBO MEB Chief would not. When the OBO MEB Chief did not concur, the IROR Manager asked an IROR program analyst to review Baggan's report. The analyst proceeded to find several problems with the Baggan chiller report, including that Baggan's allegations were incorrect and he seemed to be "going after the company." The analyst completed the chiller report and devised a remedy with the Department CO, which included obtaining an extension of the warranty the Department received from the contractor for the chiller installed at the U.S. embassy in Managua.

The IROR Manager stated s/he believes the final IROR chiller report was sent to the then-OBO Director before he retired from the Department in December 2007. Baggan wanted to send the report immediately upon completion, although it needed to be vetted before it was sent forward. He was extremely angry that the IROR program analyst was given the chiller report to review.

Interview of IROR program analyst (currently with Department of Commerce)

On September 17, 2009, the now-former IROR program analyst was interviewed and stated that prior to his/her retirement in 2004 s/he was employed as a contract specialist for over twenty years, mostly with the Department. S/he reached the level of GS-14 Branch Chief in A/LM. The program analyst stated s/he saw the chiller issue at the new

U.S. embassy in Managua, Nicaragua, as being very simple. The analyst said OBO gave the general contractor permission to install water-cooled chillers in Managua. According to the analyst, Baggan claimed OBO "received a bottle when they asked for a glass." This was not the case, however, as Baggan was "not speaking from the contract." The analyst found "the contractor was not out of line" in installing water-cooled chillers at the U.S. embassy in Managua, as this was allowed for in the contract. S/he added, "We approved it," and the OBO MEB Chief should have rejected the chillers before 35% completion was reached on the embassy if s/he had problems with the water-cooled chillers.

After reading the report Baggan submitted in December 2007, the analyst inserted comments throughout in the report and, in addition, wrote in his/her two page summary:

"BB (Bob Baggan) did not read and become familiar with the contract language covering the chillers. Had he read the contract, he would have known that the contract allowed the contractor to substitute the specified air cooler chillers with water cooler chillers if the contractor submits a justified life cycle cost analysis. The GC (general contractor) submitted the life cycle cost analysis. The GC substituted the chillers based on the life cycle cost analysis. Based on the above, the following listed comments in BB's emails are unfounded, inappropriate, unprofessional, and irresponsible and serve no purpose other than creating unnecessary conflicts among people and offices and wasting time and resources."

The analyst was asked if s/he confronted Baggan about his drawing conclusions without actually reading the contract. S/he replied that s/he did confront Baggan, but he "skirted around the issue" and changed the topic. S/he said Baggan could not have denied the fact he did not read the contract, because he would have had to tell the analyst if he obtained a copy of the contract from the CO. Because he had not done this, he couldn't tell the analyst he had read the contract.

The analyst stated that Baggan "was out of his element in contracting." S/he described Baggan as "shooting from the hip." He thought he "knew it all and viewed himself as an expert in everything." He thought he was a contracting expert; he was not. Baggan's whole approach was that "the contractor conned us." The analyst stated, "You cannot attack someone if you have not read the contract. He is damaging the federal agencies he is working at and creating a bad impression for the Department of State by making these allegations."

According to the analyst, even if the contractor committed errors in Managua, Baggan did not handle the situation properly. The analyst explained s/he found out Baggan met with the subcontractor (the chiller manufacturer) and was acting unprofessionally toward them. He was proud of being hard on the contractor." The analyst said Baggan "threatened them with receiving no more Department contracts." The analyst stated this type of behavior is inappropriate as you "don't threaten any contractor, period, not even contracting officers do that. Any actions have to be done according to the Federal Acquisitions Regulations." For example, the analyst said if issues arise with a contractor,

the CO must send the contractor a "show cause letter" and then the contractor has the opportunity to respond to the "show cause letter." The analyst stated, "It was completely unheard of what Baggan did in terms of making threats to the contractor."

Interview of Vice-President of International Operations for General Contractor #1, SA-39, Arlington, Va.

On November 2, 2009, the Vice-President of International Operations for the General Contractor (VP) was interviewed and stated the company is a private, family owned business. Almost all of its international work is with OBO and the company constructed NECs for OBO in Panama City (Panama), Algiers (Algeria), Bamako (Mali), Conakry (New Guinea), Freetown (Sierra Leone), Ciudad Juarez (Mexico), Istanbul (Turkey), Katmandu (Nepal), Yaoundé (Cameroon), Tijuana (Mexico), Sarajevo (Bosnia – 80 percent completion), Djibouti (Djibouti) and Bujumbura (Burundi - just awarded), and did a joint venture with another contractor (general contractor #2, below) on the NEC in Beijing, China. The VP traveled to all the NEC projects except for the ones in Yaoundé and Beijing.

The VP stated his/her company installed air-cooled chillers at the NECs in Cameroon, Algeria, Katmandu, Sarajevo, Tijuana and Burundi. The company installed water-cooled chillers in Conakry, Freetown, Ciudad Juarez, Bamako, and Panama City. All of the NECs awarded after 2007 have air-cooled chillers per the newly mandated OBO requirements.

The VP stated the initial capital costs of the air-cooled and water-cooled chilling systems are fairly close and there is not much of a price difference. The initial costs for water-cooled chillers are less than air-cooled chillers, but when you add in the cooling tower and "other stuff" for water-cooled chillers the costs are pretty close. Over the long term, however, water-cooled chillers are cheaper to operate, although if a water-cooled chiller breaks down all savings are lost. According to the VP, generally, over the long term, air-cooled chilling systems are more expensive than water-cooled systems.

The VP stated his/her company could not save money by installing water-cooled chillers at a NEC (over air-cooled chillers) and there is no advantage to the company to installing one type of chiller system versus another. S/he said s/he would rather be told to only install air-cooled chillers.

The VP stated new embassies are complicated projects with thousands of components and each country has its own set of circumstances, so different engineers have different opinions on what to select in terms of the type of chiller system. S/he said he did not think there was any mismanagement by OBO related to the chillers.

Interview of Director of Operations for Building Division for General Contractor #2, SA-39, Arlington, VA.

On November 2, 2009, the Director of Operations for the Building Division (Director of Operations) for general contractor #2 was interviewed. S/he has completed Department construction projects worldwide and "knows the routine" of building embassies for the Department. For example, the Director of Operations completed one of the first design-build embassy construction jobs FBO (former name for OBO) ever completed. This was in 1988 and at the new U.S. embassy in San Salvador, El Salvador. S/he also worked as general contractor #2's operation support manager on the construction of the new U.S. embassy in Beijing, China.

The Director of Operations stated his/her company no longer builds embassies for OBO and the last project they bid on was in 2005. S/he said OBO was a difficult environment to work in and, "you can't make money (constructing U.S. embassies), but you can lose money." The company is a privately held company. At its height, the company had two billion dollars in sales.

The Director of Operations explained that at the request of OBO, general contractor #2 purchased an extended warranty (six months to a year) on the contractor's water-cooled chillers in Managua and the company billed OBO for this.

INV asked the Director of Operations if there would have been any kind of advantage to general contractor #2 related to the type of chiller system installed in Managua. The Director replied, "No," and stated s/he had no idea which type of chiller system (water-cooled versus air-cooled) would be cheaper for the contractor. S/he said s/he would assume air-cooled chillers are cheaper because of the cooling tower water-cooled systems require. S/he also stated it is a "crazy assertion" that the general contractor #2 could make money by installing water-cooled chillers instead of air-cooled chillers. S/he explained, "You are not talking about a huge price difference in the two types of chiller systems" and also stated s/he recalled that someone in OBO actually favored water-cooled chillers around this time (s/he could not remember who) because they were "comfortable" with water-cooled chillers. S/he also stated water-cooled chillers "do work" and are in use all over the world. S/he said every embassy construction job is different and you have to look at the conditions of the project and use different products in different areas.

August 16, 2010