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Office of Special Investigations

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May 20, 1999

The Honorable Ted Stevens
Chairman
Committee on Appropriations
United States Senate

The Honorable Mitch McConnell
Chairman
Subcommittee on Foreign Operations
Committee on Appropriations
United States Senate

Subject: Inter-American Foundation: Allegations of Improper Contracting and Personnel Actions at the Foundation

This letter contains the results of our investigation into allegations that Adolfo Franco, Senior Vice President and General Counsel for the Inter-American Foundation (IAF), violated contracting regulations and personnel policies in his attempts to hire Carlos Urquidi for the auditor position at IAF. Specifically, you requested that we determine if IAF violated (1) Federal Acquisition Regulations (FAR) in procuring the services of Mr. Urquidi and (2) Office of Personnel Management (OPM) regulations or personnel policies in its attempts to fill the auditor position.

Results in Brief

Our investigation determined that IAF improperly issued a sole source purchase order to a temporary-help firm in violation of the FAR. IAF also violated an OPM regulation that limits an agency's use of an individual employee of a temporary-help firm to 240-days.

In addition to IAF's violation of the FAR and OPM regulation, Mr. Franco, the agency's Senior Vice President and General Counsel, manipulated the hiring process in an unsuccessful attempt to appoint Mr. Urquidi to the permanent auditor position. Mr. Franco canceled a vacancy announcement, delayed issuing another vacancy announcement, and then allowed the resulting certification to expire in order to allow Mr. Urquidi to obtain his U.S. citizenship and resolve outstanding criminal allegations in Bolivia. Throughout this process, IAF contracted for Mr. Urquidi to

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temporarily fill the auditor position until Mr. Franco could appoint him to the permanent position. Due to Mr. Franco's actions, IAF did not appoint a permanent auditor despite receiving applications from a total of 20 applicants in response to 3 vacancy announcements over a period of almost 2 years. The position currently remains vacant.

We requested assistance from the U.S. Department of State to determine whether Mr. Urquidi is a fugitive wanted by the Bolivian government. The State Department is currently investigating the matter. We also contacted the Immigration and Naturalization Service (INS) to determine whether Mr. Urquidi had failed to disclose his pending criminal complaint in Bolivia on his application for U.S. citizenship. INS is currently investigating this matter.

Background

Congress created the IAF in 1969 as an independent U.S. government corporation, to promote self-help efforts in Latin America and the Caribbean. IAF responds directly to self-help initiatives through grants to local and private organizations. IAF's appointing authority is delegated from OPM and IAF's procurements must comply with the FAR.¹

IAF is governed by a nine-member Board of Directors appointed by the President with the advice and consent of the Senate. The Board of Directors appoints the IAF President who directs the agency operations with the assistance of a Senior Vice President, three Vice Presidents, and two Directors. The Senior Vice President and General Counsel is Mr. Franco. He also serves as the agency's Secretary to the Board of Directors, Ethics Officer, and Competition Advocate and supervises the Office of Contracts. The two directors are the Director of Personnel/Equal Employment Opportunity/ Personnel Security and the Director of Financial Management and Systems (FMS). The Director of FMS is responsible for a staff of financial specialists including the auditor position that Mr. Urquidi filled on a temporary basis for almost 2 years.

Chronology of Contracting and Personnel Actions

On February 28, 1997, IAF's auditor resigned her position. On March 3, 1997, IAF's Director of Personnel advertised a vacancy announcement for the auditor position, open only to federal government employees. On March 6, 1997, IAF's Personnel

¹ IAF was created as a wholly owned Government corporation by 22 U.S.C. § 290f(a) (1994). OPM delegated examining authority to IAF by Interagency Agreement Number IF-1, dated January 30, 1996, pursuant to 5 U.S.C. § 1104 (1994), which allows the director of OPM to delegate examining authority to the heads of executive agencies. 5 U.S.C. § 105 (1994) defines an executive agency to include a Government corporation, which is defined by 5 U.S.C. § 103 (1994) as a corporation owned or controlled by the U.S. Government. The FAR is applicable to executive agencies pursuant to FAR § 1.01 and the FAR definition of executive agency, FAR § 2.101, includes wholly owned Government corporations.

Office contacted Account Temps, a temporary accounting services firm, seeking to temporarily fill the position until a permanent employee could be appointed. Account Temps provided Carlos Urquidi's resume to IAF, which made no attempt to identify any other sources for this service. On March 10, 1997, IAF's Deputy General Counsel signed a sole source Justification and Approval (J&A) for obtaining auditing services from Account Temps.

On March 11, 1997, IAF issued a purchase order to Account Temps, in the amount of \$5,200 for Mr. Urquidi to provide 200 hours of auditing service ending April 14, 1997. IAF subsequently modified the purchase order five times, extending the period of performance to 273 days and increasing the total cost to \$57,616 plus \$16,965 in travel costs.

Pleased with Mr. Urquidi's qualifications, Mr. Franco decided to extend the closing date and expand the area of consideration for the vacancy announcement issued in March so that Mr. Urquidi, a nongovernment employee, could apply. The closing date of the announcement was extended from March 21, 1997, to April 4, 1997, and the area of consideration was changed to "all sources."

Mr. Urquidi subsequently submitted an application, but his application was rejected because he was not a U.S. citizen. Mr. Franco then canceled the announcement to allow Mr. Urquidi to obtain his citizenship and reapply.² Although none of the applicants were rated, Mr. Franco told us that he had reviewed the applications and considered Mr. Urquidi to be the best qualified.³ Mr. Franco stated that he wanted to consider Mr. Urquidi for the position but that he intended to select the best applicant who applied when the next vacancy announcement was issued.

On July 29, 1997, in accordance with its policy, IAF's Office of Personnel requested an OPM background investigation of Mr. Urquidi, the results of which would be used for a security/suitability determination on Mr. Urquidi as a contractor.⁴ In August 1997, OPM requested that the State Department assist in its investigation by conducting an investigation of Mr. Urquidi in Bolivia.

In December 1997 OPM provided an interim report to IAF of its investigation, consisting of records' checks and reports of interviews with acquaintances of Mr. Urquidi. Although OPM did not express an opinion regarding Mr. Urquidi's suitability for employment, the interim report indicated that Mr. Urquidi had

² Mr. Urquidi applied to the INS for U.S. citizenship on May 1, 1997.

³ At our request, IAF's Office of Personnel rated the applicants for the March 3, 1997, vacancy announcement and found that five of the six applicants were eligible for the position.

⁴ In accordance with 5 C.F.R. § 731.101 (1999), a determination of "suitability" for federal employment is based on an individual's character or conduct that may impact on the efficiency of the service. Pursuant to 5 C.F.R. § 731.201 (1999), OPM may deny an applicant examination, deny an eligible appointment, or direct an agency to remove an appointee or employee based on the results of a suitability investigation.

financial debts in the United States and had allegedly been involved in criminal activity in Bolivia. The Director of Personnel reviewed the OPM report but overlooked the allegations of criminal activity in Bolivia. Accordingly, she informed Mr. Franco only about Mr. Urquidi's indebtedness. Mr. Franco told us that this information, though serious, did not diminish his desire to appoint Mr. Urquidi. He explained that he assessed the auditor position as low risk because it did not provide access to IAF funds and that he was satisfied with Mr. Urquidi's assurances that his financial situation was under control.

On January 1, 1998, IAF modified the Accountemps purchase order, extending the period of performance to 248 days. Because OPM regulations limit using an individual employee of a temporary help firm to 240 workdays in a 24-month period, Mr. Franco and the contracting officer decided that they would not extend the Accountemps purchase order once the period of performance was completed.⁵ Instead on March 9, 1998, IAF issued a sole source purchase order to Mr. Urquidi in the amount of \$12,772, for 103 days of auditing services. The statement of work accompanying the purchase order was drafted by Mr. Franco and stated that Mr. Urquidi was to investigate allegations of misconduct in Nicaragua and Costa Rica.⁶ Mr. Urquidi commenced work under the purchase order on March 9, 1998. IAF subsequently modified the purchase order seven times, extending the period of performance to 216 days and increasing the total cost to \$30,024 plus \$7,849 in travel costs.

In early July 1998, the Director of FMS reviewed the December 1997 OPM interim report regarding Mr. Urquidi and this time discovered the criminal allegations that had been previously overlooked. The Director of FMS told us that she immediately apprised the Director of Personnel and Mr. Franco of these allegations.

Unconcerned with these allegations, on July 7, 1998, in anticipation of Mr. Urquidi's imminent naturalization, Mr. Franco instructed the Director of FMS to advertise a second time to fill the auditor position. The Director of Personnel stated that she confronted Mr. Urquidi on July 8, 1998, questioning him regarding the criminal allegations. Mr. Urquidi explained that as a former bank official in Bolivia, he had been erroneously included in a legal action brought against the owner and managers of the bank. IAF advertised the vacancy announcement on July 13, 1998.

⁵ 5 C.F.R. § 300.504(b)(1) (1999) limits agencies to using an individual employee of a temporary help firm initially for no more than 120 workdays during a 24-month period. 5 C.F.R. § 300.504(b)(2) (1999) permits an agency to extend this period for up to 240 workdays if the agency determines that using the services of the same individual will prevent significant delay.

⁶ By a letter dated December 12, 1997, Mr. Franco learned of allegations of fraud, waste, and abuse by IAF's Nicaraguan in-country service provider. By a memorandum dated February 18, 1998, Mr. Franco learned of an allegation that IAF's Costa Rican in-country service provider had executed a trust agreement with IAF grantees, in violation of the grant agreements between IAF and the grantees.

On July 16, 1998, OPM forwarded the State Department's June 1, 1998, investigative report to IAF. In part, the report stated the following:

"A criminal complaint has been filed by the government of Bolivia against applicant [Mr. Urquidi] with nine other individuals for a lengthy list of alleged financial crimes, including criminal association, material falsification, falsification of private documents, use of false instruments, suppression and destruction of documents and fraud and misappropriation. The 11th court in La Paz, Bolivia found Urquidi in contempt of court for failure to appear following a proclamation issued August 14, 1995. It is expected that Urquidi will be sentenced in absentia in the near future....

"Attempts by police to locate and arrest Urquidi in Bolivia in 1995 were unsuccessful....

"In supreme resolution #215473, dated March 15, 1995, Superintendent of Banks and Financial Institute of Bolivia initiated criminal complaints against... [Mr. Urquidi]. The complaint charges that he was the principal actor for the Banco de Inversion S.A. (BIBOA) with 80% controlling interest and was directly responsible for the bank failure....

"...[N]o arrest warrant currently exists...."

Even though the Bolivian government had filed a criminal complaint against Mr. Urquidi, Mr. Franco did not change his opinion of Mr. Urquidi's suitability, as Mr. Franco believed the Bolivian justice system to be extremely corrupt. Additionally, Mr. Franco assumed that the INS had thoroughly investigated Mr. Urquidi and would not have decided to naturalize him if there had been any substance to the complaint. Mr. Franco felt that Mr. Urquidi should be presumed innocent but had warned him that he would be dismissed if convicted.

Mr. Urquidi was naturalized on July 17, 1998. On or about July 23, 1998, Mr. Urquidi submitted a job application (SF 171), answering "no" in response to the question, "Are you now under charges for any violation of law?"⁷

After reviewing Mr. Urquidi's application and based on her prior discussions with him, the Director of Personnel questioned Mr. Urquidi regarding his omission of the fact that a criminal complaint had been lodged against him in Bolivia. Mr. Urquidi claimed that it was an oversight and changed the answer on his application to the question regarding pending legal charges against him to "yes."

On August 5, 1998, the Director of Personnel issued a selection certificate certifying Mr. Urquidi and two other applicants to be the best-qualified candidates for the auditor position.⁸ Although the Director of FMS was the designated selecting official

⁷ Approximately a year earlier, when he submitted Form 85P, Questionnaire for Public Trust Positions, Mr. Urquidi had answered "no" to the question, "In the last seven years, have you been arrested, or charged with, or convicted of any offense(s)?"

⁸ Seven other candidates applied. IAF rated Mr. Urquidi and five others as eligible for the position.

and would supervise the new auditor, Mr. Franco selected Mr. Urquidi while the Director of FMS was on leave and without her knowledge. Subsequently, OPM inquired about the hiring status of Mr. Urquidi in light of the State Department's findings and cautioned IAF to take no action concerning employment of Mr. Urquidi until OPM issued its final suitability report. Based on OPM's advice, Mr. Franco did not appoint Mr. Urquidi and allowed the selection certificate to expire.

In anticipation of OPM's final suitability report, Mr. Franco directed that IAF advertise a third vacancy announcement. Aware of our investigation into allegations that he was inappropriately attempting to appoint Mr. Urquidi, Mr. Franco determined that the Director of FMS should serve as the selecting official. On January 25, 1999, IAF advertised a vacancy announcement with a closing date of February 17, 1999. Mr. Urquidi and five other candidates applied. The Director of Personnel certified Mr. Urquidi and two others as the best-qualified applicants.

On January 28, 1999, OPM provided IAF the results of an Interpol inquiry through Bolivian authorities that determined that Mr. Urquidi "... does not register a police, judicial, or narcotics trafficking record." Based on the uncertain reliability of the results of the Interpol inquiry, OPM did not consider this information to be significant.

In its final report to the IAF, OPM warned IAF: "There are potentially actionable issues which, standing alone, would be disqualifying under security/suitability considerations. You are required to coordinate with OPM before you take adjudicative action." OPM advised the Director of Personnel that if IAF hired Mr. Urquidi, OPM would consider taking jurisdiction over the personnel action and terminating Mr. Urquidi's employment for a material falsification on his job application and unsuitability.⁹

IAF took no further action until April 21, 1999, when the Director of FMS decided not to select any of the candidates for the auditor position. She informed Mr. Franco that Mr. Urquidi was unsuitable, one candidate interviewed poorly, and the other had withdrawn from consideration. Mr. Franco questioned the Director's decision not to select Mr. Urquidi, explaining that he considered the absence of a criminal record to be a vindication of Mr. Urquidi's suitability. Notwithstanding Mr. Franco's objections, the Director did not fill the position.

Contracting Issues

AccounTemps Purchase Order

IAF improperly issued a sole source purchase order to AccounTemps for the services of Mr. Urquidi in violation of the FAR and extended the period of

⁹ See note 4, *supra*.

performance beyond the limit set forth in OPM regulations for using an individual employee of a temporary-help firm.

The Competition in Contracting Act requires, with certain limited exceptions, that contracting officers provide for full and open competition in government procurements.¹⁰ For acquisitions not exceeding the simplified acquisition threshold of \$100,000, agencies may orally solicit quotations and may solicit from a single source if the contracting officer determines that due to urgency, exclusive licensing agreements, industrial mobilization, or a similarly compelling reason, only one source is reasonably available.¹¹

IAF prepared a sole source J&A for the AccounTemps purchase order stating that the auditor position had to be immediately filled in order to avoid a backlog of grant audits, that would adversely affect IAF's efficiency and effectiveness. Without explanation, the J&A stated that AccounTemps was the only reasonably available source for the required accounting services. In subsequent interviews, Mr. Franco and the IAF contracting officer told us that the sole source purchase order to AccounTemps was justified by unusual and compelling urgency.

We find that no unusual or compelling urgency existed in this case. While IAF had a legitimate interest in promptly filling the vacant auditor's position, orally soliciting quotations from several temporary agencies would not have significantly delayed the procurement process. During our interviews, both Mr. Franco and the contracting officer agreed with our conclusion that the need to temporarily fill the auditor position was not so urgent that IAF could not have solicited oral quotations from additional sources.

The FAR permits contracting officers to enter into contracts with temporary-help firms for the brief use of temporary employees. However, these services must not be used in lieu of regular recruitment under civil service laws and must comply with OPM limits on the duration of the temporary services.¹²

An OPM regulation limits agencies to using an individual employee of a temporary firm initially for no more than 120 workdays during a 24-month period.¹³ An agency may extend this period for up to 240 workdays if the agency determines that using the services of the same individual will prevent significant delay.¹⁴

IAF incrementally extended its purchase order with AccounTemps for the services of Mr. Urquidi to 273 days, exceeding the 240-workday limit by 33 workdays. IAF

¹⁰ 10 U.S.C. § 2304(a)(1)(A) (1994); FAR § 6.101.

¹¹ FAR § 13.106-1(b).

¹² FAR § 37.112; 5 C.F.R. § 300.504 (1999).

¹³ 5 C.F.R. § 300.504(b)(1) (1999).

¹⁴ 5 C.F.R. § 300.504(b)(2) (1999).

then avoided further violations of the 240-workday limit by issuing a purchase order directly to Mr. Urquidi.

Manipulation of the Hiring Process

Mr. Franco insists that his actions were justifiable because IAF was in desperate need of a competent auditor and Mr. Urquidi was an exceptionally well-qualified applicant. Mr. Franco denies that he was motivated by any personal fondness for Mr. Urquidi and claims that he would have appointed another applicant had one been better qualified. Nevertheless, Mr. Franco manipulated the appointment process in an unsuccessful attempt to appoint Mr. Urquidi to the permanent auditor position.

To that end, Mr. Franco expanded the area of consideration for the March 1997 vacancy announcement position to "all sources," extended the deadline to allow Mr. Urquidi to apply, and canceled the vacancy announcement when he learned that Mr. Urquidi was not a U.S. citizen and therefore ineligible. Mr. Franco also delayed the advertisement of a second vacancy announcement until July 13, 1998, in order to allow Mr. Urquidi to obtain his citizenship. When OPM questioned Mr. Urquidi's suitability after Mr. Franco selected him in August 1998, Mr. Franco allowed the certification to expire rather than select one of the other candidates.

In taking these actions, Mr. Franco created the appearance that he was attempting to circumvent the merit systems principle requiring agencies to appoint applicants only after fair and open competition, which ensures that all receive equal opportunity.¹⁵

Although Mr. Franco maintains that he did nothing wrong, he conceded to us that his actions created the appearance that he attempted to circumvent the requirement for fair and open competition in order to appoint Mr. Urquidi.

Scope and Methodology

We contacted the U.S. Department of State in Bolivia and requested the Regional Security Officer to contact the Bolivian Superintendencia de Banco and the 11th Court to determine Mr. Urquidi's status. This request is pending.

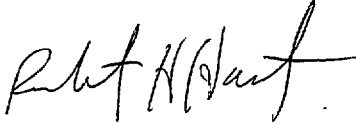
We interviewed Mr. Urquidi, and he admitted that he knew of these pending charges in Bolivia. Mr. Urquidi stated that he has obtained legal representation and filed a motion to dismiss the charges in Bolivia.

We also contacted INS and provided it information that Mr. Urquidi may have violated federal law by falsifying his application for U.S. citizenship.

¹⁵ 5 U.S.C. § 2301(b)(1) (1994).

We will send copies of this letter to appropriate Committees and the Honorable Maria Otero, Chair of the IAF Board of Directors. We will also make copies available to others on request. If you have any questions or need additional information, please contact Assistant Director John Ryan at (202) 512-6722.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert H. Hast". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert H. Hast
Acting Assistant Comptroller General
for Special Investigations

(600520)

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