

Office of the Inspector General
United States Department of Justice
REPORT OF INVESTIGATION

Report of Investigation Relating to J. Robert Flores,
Former Administrator of the
Office of Juvenile Justice and Delinquency Prevention



REDACTED REPORT

SUBJECT J. Robert Flores Former Administrator for OJJDP		CASE NUMBER 2008-001884	
OFFICE CONDUCTING INVESTIGATION FDO		DOJ COMPONENT Office of Justice Programs	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED	
<input checked="" type="checkbox"/> AIGINV		PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input type="checkbox"/> NO	
<input checked="" type="checkbox"/> Component		Date of Previous Report:	
<input type="checkbox"/> USA			
<input type="checkbox"/> Other			

SYNOPSIS

This investigation was initiated based on anonymous allegations relating to the hiring of Hector Rene Fonseca as a contract consultant to the Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP). The allegations were first made to the Office of the Inspector General (OIG). The OIG initially referred the allegations to the Assistant Attorney General (AAG) for OJP, who conducted an internal inquiry. The Office of the AAG for OJP forwarded its findings to the OIG, which undertook this further investigation.

The following allegations were in the initial complaint received by the OIG:

- The circumstances of Fonseca’s contract suggest that Fonseca was operating under a prohibited “personal services” contract with OJJDP’s Administrator, Robert Flores; and
- Fonseca’s contract amounted to waste and misuse of funds because he did not produce material related to juvenile justice programming.

During an OIG interview of a witness who requested confidentiality, the following further allegations were raised:

- Flores misused his authority as Administrator by mishandling the award of discretionary grant funds for fiscal year (FY) 2007 in that some of the highest rated grant applications were not selected for funding by Flores while lower scoring applications were funded.

DATE 4/27/2009	SIGNATURE
PREPARED BY SPECIAL AGENT	[REDACTED]
DATE 4/27/2009	SIGNATURE
APPROVED BY SPECIAL AGENT IN CHARGE	[REDACTED]

- Flores asked career staff to babysit his children on a number of occasions when he brought them to the office.
- Flores requested his Special Assistant to work on his résumé.
- Flores went to Las Vegas to deliver a speech at a conference of the National Council of Juvenile and Family Court Judges, but he did not make the speech.

In addition, on June 19, 2008, Flores testified before the House Committee on Oversight and Government Reform. During that hearing, Flores was asked whether he had played golf with officials from an OJJDP grantee, the World Golf Foundation, without paying the appropriate fees. The OIG also investigated this allegation.

OJP's Office of General Counsel referred an additional allegation relating to Flores to the OIG. That allegation was that Flores, OJJDP Chief of Staff Michele DeKonty, and [REDACTED] directed an OJP contractor, ICF International, to subcontract with a specific company, Russ Reid, to provide training to faith-based organizations on sustainability without federal funds. The allegation was that the contract violated the Federal Acquisition Regulations (FAR) and OJP Office of Administration Procurement Operating Procedures. The OIG also investigated this allegation.

The following is a summary of the OIG's findings with respect to each of these allegations.

Fonseca worked as a contract consultant to OJJDP from November 2004 to July 2007, during which time he was paid about \$281,000 by OJJDP. According to Flores, he hired Fonseca as a consultant because he thought Fonseca would be an "excellent fit" for a new anti-gang pilot program that OJJDP was implementing. Flores said he wanted to push the President's faith-based initiative and that Fonseca's experience would add that element to the anti-gang efforts. We found that starting in 2003, Flores made several efforts to hire Fonseca. He first requested a waiver to enable Fonseca to be hired even though he was not a U.S. citizen at the time. The Office of the AAG for OJP questioned the reasons Flores advanced in support of the waiver. Flores also sought to hire Fonseca directly through a "sole source" justification. The Office of the AAG for OJP denied Flores's request to hire Fonseca under a "sole source" contract because there was not a sufficient basis for doing so. Flores then inquired within OJJDP about funding Fonseca's salary as a contractor through an OJJDP anti-gang program operating in Florida even though Fonseca would be working in Washington, D.C. OJJDP personnel told Flores that this could not be done.

Eventually, in late 2004 Flores directed that Fonseca be hired as a consultant through an existing OJP contract with Aspen Systems/Lockheed Martin. According to Flores, Aspen provided a broad range of services to OJP under the contract, ranging from conference planning to writing and editing, and everything in between.

Under the original subcontract, Fonseca's work was broadly stated as reviewing and commenting on research, publications, brochures, and assisting in the review of grant applications. Fonseca's contract was extended after 6 months and his statement of work was expanded to include coordinating and developing a meeting of national organizations that represent or fund small community-based programs or entities that serve at-risk youth. He was also tasked with organizing faith-based groups in support of OJJDP's gang reduction program, assisting OJJDP staff integrate a faith-based component into existing programs, and developing a database of entities supporting faith-based initiatives. When OJP's contract with Aspen ended in September 2006, OJJDP instructed

another contractor, DB Consulting, to hire Fonseca as a consultant for one year. Under this \$150,000 contract, Fonseca had similar deliverables and was also charged with conducting one-day conferences in four cities.

The OIG investigation found that Flores did not follow normal contracting procedures in the hiring of Fonseca as a consultant for OJJDP. Flores, through OJJDP employees, directed Aspen and DB Consulting to hire Fonseca as a consultant. The position was not open to competition and there was no justification for Fonseca being considered as a “sole source” uniquely qualified for the position. Indeed, an earlier request by Flores to hire Fonseca directly as the “sole source” was denied by the Office of the AAG for OJP. Moreover, FAR, Part 37.104, requires the government to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws, and obtaining personal services by contract, rather than by direct hire, circumvents the law unless Congress specifically authorized acquisition of the services by contract. Fonseca’s contract constituted a personal services contract because he was assigned deliverables by Flores in addition to those specified under his contract, he reported directly to Flores, and was supervised directly by Flores rather than by his employer, the prime contractor. As OJP’s internal inquiry found, he worked on-site at OJJDP; OJJDP provided the principal tools and equipment needed for his work; OJJDP civil service personnel performed comparable work; and although Fonseca’s initial contract was for a period of six months, it was extended and his employment lasted for more than two and a half years.

The OIG also investigated the allegation that Fonseca’s contract amounted to waste and misuse of funds. Flores said that he hired Fonseca because of his experience in anti-gang efforts and his ties to the faith-based community. Flores said he personally directed Fonseca’s activities, which consisted of work to further OJJDP’s Gang Reduction Program. Flores described Fonseca’s outreach to faith-based organizations and his coordination of a conference to enlist their assistance in the anti-gang effort. Flores said that Fonseca also worked with the Gang Reduction Program directors in Los Angeles, Miami, Wisconsin, and Richmond; coordinated OJJDP program meetings; and developed contacts in the faith-based community. However, we found that Fonseca’s reports of his activities to the prime contractor were lacking in detail, making it difficult to determine what he in fact was doing for OJJDP. Our investigation also found mixed opinions about Fonseca’s services to OJJDP’s programs. Flores told us he strongly supported Fonseca’s contributions, as did one special assistant to a Gang Reduction Program site director with whom Fonseca worked. However, other OJJDP staff and program directors did not know what Fonseca did for OJJDP and could not point to any benefit to OJJDP programs from Fonseca’s work. In sum, we concluded that the documentation of Fonseca’s work was not sufficient, particularly in view of his rate of compensation and the duration of his contract. However, the OIG could not conclude based on all the evidence that Fonseca’s contract was a misuse of OJJDP funds.

Overlapping with the period of this investigation, the OIG conducted an audit of OJJDP’s 2007 discretionary grant award process because of allegations that political considerations influenced Flores’s selection of grant awards. The allegations noted that Flores awarded OJJDP grants to entities whose OJJDP peer reviews were rated much lower than proposals from other organizations that did not receive awards, and it was alleged that improper considerations influenced Flores’s grant award recommendations.

There is no law or regulation requiring peer review results to be the sole determinant of grant awards. Yet, because OJP and OJJDP devote considerable resources to conduct peer reviews of grant proposals, our audit concluded that OJP and OJJDP should ensure that the peer review process is transparent and a significant factor in making award decisions. Moreover, because neither Flores nor OJP Assistant Attorney General Regina Schofield maintained documents showing why the FY 2007 OJJDP discretionary award decisions were made,

we could not corroborate Flores's stated reasons for his award recommendations or disprove the allegations that subjective or personal factors improperly influenced his decisions.

In this investigation, we also examined the allegation that Flores played golf with an OJJDP grantee without paying the golfing fees. Flores acknowledged playing golf with World Golf Foundation officials at the First Tee Network Meeting in February 2006, while attending the conference as a guest speaker on behalf of OJJDP. The conference was sponsored by the World Golf Foundation. World Golf, through its First Tee Initiative, received "earmarked" – legislatively directed -- grants from OJJDP each year from FY 2003 to 2006 and an OJJDP discretionary award in FY 2007. Flores testified to the House Committee that he attempted to pay the \$159 golfing fees, but the conference organizers could not accept payment from him at the time. Flores said he later asked to be billed for the fees. However, according to the receipt Flores provided to the House oversight committee as proof of his payment of the February 2006 golfing fees, he did not pay the \$159 fees associated with the golf outing until June 18, 2008, more than two years after the event and the day before his testimony before the oversight committee.

The OIG concluded that Flores violated the federal ethics regulations by accepting in February 2006, and not repaying for two years, a gift valued at more than \$20, the round of golf Flores played with World Golf officials that was valued at \$159. *See* Accepting Gifts, 5 CFR 2635.202–204. World Golf's First Tee Initiative was an OJJDP grantee at the time Flores played his round of golf, which made the World Golf Foundation a prohibited source under the regulations. A prohibited source includes persons and entities that do business or seek to do business with the employee's agency. Moreover, during FY 2007, after Flores played golf at the 2006 conference and approximately one year before he paid for the round of golf, Flores recommended that World Golf's First Tee Initiative receive an OJJDP discretionary grant award. While we cannot conclude that the round of golf with World Golf officials affected Flores's decision, the OIG concluded that his actions violated federal ethics rules.

The OIG also investigated the allegation that Flores, DeKonty, and [REDACTED] inappropriately directed a contractor, ICF International, to subcontract with a specific marketing and communications firm, Russ Reid, in violation of OJP Office of Administration Procurement Operating Procedures and the applicable provisions of the FAR. During late summer and early fall 2007, Flores wanted OJJDP to conduct training for faith-based organizations on sustainability without federal funds. This type of project was covered by OJP's contract with ICF International to provide for technical assistance and training, to coordinate conferences, and to provide experts to OJP as needed. [REDACTED] and ICF believed ICF was capable of providing this sustainability training. However, according to Flores and [REDACTED] DeKonty arranged a meeting for Flores with executives from Russ Reid whom DeKonty knew from working "on the Hill years ago." After the meeting, Flores told [REDACTED] the OJJDP Contracting Officer's Technical Representative (COTR) for the ICF contract, that he wanted to hire Russ Reid for these services.

[REDACTED] said he told DeKonty that OJP's Contracting Officer would not approve the \$210,000 subcontract she wanted Russ Reid to handle. For that reason, [REDACTED] said DeKonty directed him to bypass the OJP Contracting Officer. [REDACTED] then engaged in direct negotiations with Russ Reid for the value and deliverables of the subcontract. We concluded that [REDACTED] direct negotiation with Russ Reid without involving the Contracting Officer violated the FAR and OJP Office of Administration Procurement Procedure No. 08-01.

██████████ also prepared on ICF's behalf the "sole source" justification memorandum advocating that a subcontract be awarded to Russ Reid without competition, even though ██████████ said he did not believe at the time that Russ Reid was uniquely qualified and possessed special skills such that a "sole source" contract was justified. DeKonty approved the "sole source" justification memo. Contrary to the requirements of the FAR, OJP's Contracting Officer did not learn of the subcontract until after ICF had engaged Russ Reid.

██████████ acknowledged that he breached his duties under OJP Office of Administration Procurement Operating Procedures and the FAR by engaging in direct negotiations outside the presence of a Contracting Officer and preparing a false "sole source" justification memo because he feared reprisal by DeKonty if he did not follow her instructions. However, we found that he also failed to notify the Contracting Officer of DeKonty's improper conduct relating to the Russ Reid subcontract, which was a further violation of OJP procurement procedures. ██████████ was relieved of COTR duties by OJP as a result of this incident.

With respect to DeKonty, we found that she solicited Russ Reid for the sustainability training project for faith-based organizations because she knew an executive at the firm, and she arranged for Russ Reid personnel to meet with Flores about a training and assistance project covered under ICF's contract with OJP. When ██████████ told DeKonty that a subcontract with Russ Reid would not be approved by OJP's Contracting Officer, DeKonty improperly directed OJJDP's COTR to bypass OJP's Contracting Officer and Acquisition Management Division (AMD) and negotiate the terms of the subcontract directly with Russ Reid. ██████████ prepared a false "sole source" justification memo, which was approved by DeKonty. DeKonty then counseled ██████████ not to cooperate with AMD's internal inquiry into the circumstances of the Russ Reid contract.

Flores stated to the OIG that that he did not have knowledge of government procurement requirements. He acknowledged that he told ██████████ that he wanted to hire Russ Reid. However, he said that he did not tell ██████████ to bypass the Contracting Officer or OJP's AMD. He also said he was not aware of the process by which ██████████ accomplished the subcontract with Russ Reid and that he relied on ██████████ Flores acknowledged that he was aware DeKonty brought Russ Reid in for the meeting because she knew someone at the firm, but said he did not know what position the person DeKonty knew held at the firm, or the nature of their relationship.

Our investigation also examined the issue of whether DeKonty's involvement in the process leading to the subcontract with Russ Reid constituted a conflict of interest. We were limited in our ability to determine the nature or the relationship between DeKonty and Russ Reid because DeKonty left the Department after having refused to testify before the House oversight committee and she declined to be interviewed by us. However, the Russ Reid executive who DeKonty had previously worked with told us that he did not believe DeKonty had any financial interest in the company and that he did not have a personal relationship with her.

Regardless of whether DeKonty's involvement in the Russ Reid subcontract constituted a conflict of interest, we concluded that Flores was not sufficiently sensitive to the potential conflict of interest or the appearance of such a conflict. He did not inquire into the nature of DeKonty's relationship with Russ Reid so that he could make an informed decision about allowing her to handle management of the contracting process, or recusing her from it.

The OIG investigation did not substantiate the remaining allegations. The OIG investigation did not find that Flores asked career staff to babysit his children when he brought them to the office. Flores told the OIG he brought his children to the office on several occasions, usually during the summer. He said that he brought his

son to the office about five or six times and his daughters about twice. He stated he had not asked his staff to babysit his children. He said that his assistant offered to have lunch with his children two or three times, and OIG interviews of OJJDP staff corroborated Flores's statements. Staff members told us that Flores brought his children to the office, one at a time, about six times since he began working at OJJDP in 2002, and the children usually stayed in Flores's office and cared for themselves.

The OIG investigation also did not substantiate the allegation that Flores asked his Special Assistant to work on his résumé. The Special Assistant told us that she had not worked on Flores's résumé. Rather, she said she had Flores résumé stored on her computer because she provided it to conference or meeting organizers when Flores was scheduled to deliver speeches or attend meetings. She said that Flores did the work on his own résumé.

Finally, the OIG did not substantiate the allegation that Flores went to Las Vegas but failed to make a speech there. The OIG investigation found that Flores was scheduled to make a speech at the 2004 conference of the National Council of Juvenile and Family Court Judges in Las Vegas. Flores told the OIG that he became ill after having breakfast in Las Vegas on the morning of the speech and was unable to present his speech at the scheduled time of 10:00 a.m. He said that he presented his speech to the conference attendees that same day during lunch, and that he subsequently sent a letter of apology to the Council. The OIG confirmed with the organizers of the conference that Flores delivered a speech during the lunch session of the conference on the same day it had been scheduled.

The OIG presented the findings of this investigation to the Department of Justice (DOJ) Public Integrity Section, which declined civil or criminal action.

The OIG has completed its investigation and is providing this report to OJP for appropriate action.

ADDITIONAL SUBJECTS

Hector Rene Fonseca

Former consultant for the Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Michele DeKonty

Former Chief of Staff for OJJDP



DETAILS OF INVESTIGATION

Predication

In March 2007, the OIG received an anonymous complaint alleging that OJJDP Administrator Robert Flores circumvented normal contracting procedures in hiring contractor Hector Rene Fonseca and that Fonseca's contract amounted to waste and misuse of funds. The OIG forwarded the allegations to the AAG for OJP. The AAG for OJP conducted an internal inquiry, which found that Fonseca's contract constituted a personal services contract, in violation of Federal Acquisition Regulations (FAR), Part 37.104. This regulation requires the government to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, is prohibited unless Congress specifically authorized acquisition of the services by contract. Factors that are considered strong indicators of a personal services contract are: the services are performed on-site; the government furnishes the principal tools and equipment; comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel; and the services last for more than one year. OJP concluded that "[w]hile many of our contractors have work stations at OJP, [OJP is] concerned that the documents demonstrate that Mr. Fonseca performed work, such as the sole OJJDP representative at meetings, that is work usually accomplished by civil service employees. Certainly, his services have extended beyond one year."

OJP's inquiry also found that Fonseca failed to demonstrate that he completed the deliverables under his contract. OJP characterized Fonseca's reports as "sketchy and do not support a 40-hour work week." Moreover, OJP found that Flores instructed Aspen to hire Fonseca as a subcontractor after OJP's Acquisition Management Division (AMD) told Flores that the facts did not justify a "sole source" contract for Fonseca, and that Fonseca's contract was extended even though it was not clear what work he was doing for OJJDP.

The Office of the AAG for OJP reported the findings of its internal inquiry to the OIG. The OIG undertook this further investigation. During the OIG's investigation, additional allegations about Flores's conduct arose and were investigated.

Investigative Process

The OIG investigation consisted of more than 30 interviews of current and former OJP and OJJDP employees, contractors, and grantees. We also interviewed Flores and ██████████ Fonseca and DeKonty declined our requests for an interview.

We interviewed the following:





In addition, we reviewed records obtained from OJP, OJJDP, Aspen Systems/Lockheed Martin, DB Consulting, and ICF International

Background

According to its web site, OJP provides leadership to federal, state, local, and tribal justice systems by disseminating information and best-practices and providing grants for the implementation of crime fighting strategies. OJP is led by an Assistant Attorney General and is composed of six bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Community Capacity Development Office, the National Institute

of Justice, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime.

According to OJJDP's web site, it assists community efforts in the area of juvenile delinquency and victimization by developing, implementing, and monitoring programs for juveniles, and awarding funds to states to support local juvenile delinquency programming. OJJDP is headed by an Administrator, who establishes OJJDP's priorities and policies.

Robert Flores was the Administrator of OJJDP from April 2002 until January 2009.

Michele DeKonty was OJJDP's Chief of Staff from September 2006 to June 2008. She was removed from her position in June 2008, because she declined to testify before the House Committee on Oversight and Government Reform regarding discretionary grant awards made by OJJDP for FY 2007.

Rene Fonseca worked as a contract consultant to OJJDP from November 2004 to July 2007 under subcontracts with Aspen Systems/Lockheed Martin and DB Consulting. Flores said that Fonseca was hired to conduct outreach to faith-based organizations and coordinate the involvement of the faith-based community in the anti-gang pilot program OJJDP was implementing. OJJDP paid Fonseca \$280,841.27 during this period.

Allegation That Flores Misused His Authority to Hire Fonseca and that Fonseca's Contract was a Personal Services Contract

Fonseca's Hiring

Fonseca was hired as a consultant to OJJDP under a subcontract with Aspen Systems/Lockheed Martin in November 2004. The original subcontract was for a period of 6 months and compensated Fonseca at the rate of \$450 per day worked. Under the original subcontract, Fonseca's work was broadly stated as reviewing and commenting on research, publications, and brochures, and assisting in the review of grant applications. Fonseca's contract was extended after six months and his statement of work was expanded to include coordinating and developing a meeting of national organizations that represent or fund small community-based programs or entities that serve at-risk youth. He was also tasked with organizing faith-based groups in support of OJJDP's gang reduction program, assisting OJJDP staff integrate a faith-based component into existing programs, and developing a database of entities supporting faith-based initiatives.

When OJP's contract with Aspen ended in September 2006, OJJDP instructed another contractor, DB Consulting, to hire Fonseca as a consultant for one year. Under this \$150,000 contract, Fonseca had similar deliverables and was also charged with conducting one-day conferences in four cities. Fonseca served as a consultant to OJJDP through July 2007, and he was paid about \$281,000 by OJJDP.

OJJDP employees and Flores told us that Flores began making efforts to hire Fonseca after a former colleague of Flores recommended Fonseca in 2003. Flores said he interviewed Fonseca and immediately took steps to

hire him. Flores said he did not interview any other candidates. According to Flores, he wanted to hire Fonseca because he thought Fonseca would be an “excellent fit” for the new anti-gang pilot program that OJJDP was implementing. Flores said he wanted to push the President’s faith-based initiative and that Fonseca’s experience would add that element to the anti-gang efforts. Flores added that he was “not aware of anybody else who had tried to use a contractor to do what I wanted to do, which was to reach out to the field and to help move the faith-based initiative forward.” Flores said he requested a waiver to enable Fonseca to be hired even though he was not a U.S. citizen at the time. However, the Office of the AAG for OJP questioned the reasons Flores advanced in support of the waiver. Flores also sought to hire Fonseca through a “sole source” justification. The Office of the AAG for OJP also denied Flores’s request to hire Fonseca under a “sole source” contract because there was not a sufficient basis for doing so.

Around this time, a former OJJDP program coordinator said Flores told him “we have a contractor we want to bring on board, how do we do it?” According to the program coordinator, Flores said he wanted Fonseca to work at the OJJDP office in Washington under Flores’s supervision, but to fund Fonseca’s salary through an OJJDP anti-gang program operating in Florida. The program coordinator told Flores that this could not be done.

Eventually, Flores directed that Fonseca be hired through an existing OJP contract with Aspen Systems/Lockheed Martin. According to Flores, Aspen provided a broad range of services under the contract, ranging from conference planning to writing and editing, and everything in between. Notwithstanding OJP’s determination that a “sole source” contract for Fonseca would not be justified, there was no competition for the position.

OJJDP’s COTR for the Aspen contract said that Aspen was concerned that the money in its contract would not support Fonseca’s hiring, so the COTR processed a contract modification to fund Fonseca’s salary. The COTR said that the modification was approved by AMD. The COTR said she had a telephone conversation with the OJP Contracting Officer for the Aspen contract about hiring Fonseca as a consultant under the Aspen contract and he never gave her any information that the FAR would prohibit Flores from hiring Fonseca under a subcontract with Aspen. However, the Contracting Officer said he had no recollection of any such conversation and that COTR’s typically make this type of request in an e-mail so that they have a record of AMD’s response. The Contracting Officer said there was no e-mail communication with AMD regarding Fonseca’s hiring. The Contracting Officer also said that AMD’s approval of the contract modification related only to the work, not the hiring of Fonseca. It would not constitute approval to hire Fonseca.

The OIG investigation found that Flores did not follow the required contracting procedures in hiring Fonseca as a consultant for OJJDP. The FAR requires full and open competition in contracting. One of the several circumstances permitted under the FAR for contracting without competition is as a “sole source” justification, which exists when only one responsible source will satisfy an agency’s requirements. FAR 6.302-1. The requirements and approvals for application of a “sole source” justification are described in FAR sections 6.303 and 6.304. According to FAR section 6.304(c), a justification for contracting by other than full and open competition must be approved in writing. However, Flores, through OJJDP employees, directed Aspen and DB Consulting to hire Fonseca as a consultant. The position was not open to competition. An earlier request by Flores to hire Fonseca directly as the “sole source” had been denied by the Office of the AAG for OJP.

Fonseca's Contract Was a Personal Services Contract

OJP's internal inquiry also concluded that Fonseca's contract constituted a personal services contract, in violation of Part 37.104 of the FAR, which requires the government to obtain its employees by direct hire under competitive appointment pursuant to the civil service laws unless Congress has specifically authorized acquisition of the services by contract.

OJP considered the following factors as strong indicators of a personal services contract: the services are performed on-site; the government furnishes the principal tools and equipment; comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel; and services last for more than one year. OJP concluded that "[w]hile many of our contractors have work stations at OJP, [OJP is] concerned that the documents demonstrate that Mr. Fonseca performed work, such as the sole OJJDP representative at meetings, that is work usually accomplished by civil service employees. Certainly, his services have extended beyond one year."

As noted above, Fonseca's deliverables under his contracts were broad and vague. Flores and other OJJDP employees told the OIG that Flores established Fonseca's deliverables. Flores stated that he assigned work to Fonseca, that Fonseca reported directly to him, and that he supervised Fonseca. OJJDP's COTR for the Aspen contract said that Fonseca met directly with Flores and Flores gave Fonseca direction and determined his work. OJJDP's COTR also said that her contact at Aspen complained that Aspen did not know what Fonseca was doing and that he was not filing his required activity reports. Indeed, during OJP's internal inquiry, Aspen's project manager told OJP that when Aspen met with Fonseca in March 2005, about his failure to document his work for OJJDP, "Fonseca stated that he would not provide any documentation to support his \$450 daily fee until the end of the contract period."

The OJJDP COTR said she told Flores that Fonseca had certain specific deliverables that were required under his contract and that Fonseca could not work outside his contract stipulations. She also said she told Flores that she did not see any deliverables from Fonseca. According to the COTR, Flores responded that he was comfortable and satisfied with Fonseca's work and that if anybody had issues with that, they should contact him directly. The COTR also said that when Aspen withheld Fonseca's final payment at the end of his July 2005 contract subject to receiving his deliverables, Flores insisted that Fonseca be paid.

As OJP's internal inquiry found, OJP provided Fonseca with workspace, a computer, a telephone, and supplies to perform his work. OJP's inquiry also found that on various occasions Fonseca represented the interests of OJJDP without a federal employee present, a task more properly handled by an employee than a contractor. In addition, Fonseca worked at OJJDP for an extended period under a long-term salary-type contract, rather than under a more typical consultant contract based on tasks.

For all of these reasons, OIG concluded, as had OJP, that Flores entered into an improper personal services contract with Fonseca, in violation of FAR section 37.104.

Allegation That Fonseca's Contract Was a Misuse of OJJDP Funds

The OIG also investigated the allegation that Fonseca's contract amounted to waste and misuse of funds. Flores said that he hired Fonseca because of his experience in anti-gang efforts and his ties to the faith-based community through Samaritan's Purse, an international organization. As previously noted, under his original subcontract Fonseca's work was broadly stated as reviewing and commenting on research, publications, and brochures, and assisting in the review of grant applications. Fonseca's statement of work for his first contract extension included coordinating and developing a meeting of national organizations that represent or fund small community-based programs or entities that serve at-risk youth. He was also tasked with organizing faith-based groups in support of OJJDP's gang reduction program, assisting OJJDP staff integrate a faith-based component into existing programs, and developing a database of entities supporting faith-based initiatives. Fonseca had similar deliverables for the last year of his contract and was also tasked with conducting one-day conferences in four cities. In addition, Flores said he personally directed Fonseca's activities, which consisted of work to further OJJDP's Gang Reduction Program.

Flores said that Fonseca's first task was to determine if the faith-based community wanted to get involved in the anti-gang initiative. He assigned Fonseca to work with OJJDP employees to organize a conference in Washington, D.C. about OJJDP's anti-gang programs for the faith-based community. He said the conference was held in May 2005. About 60 to 75 groups were represented. Flores said he considered it a successful event because it motivated the faith-based community to become involved in the anti-gang efforts, reduced hesitancy about the program, and promoted more positive reaction among OJJDP staff about the faith-based initiative. Flores said that the centerpiece of the event was a great presentation by an outside speaker that was arranged by Fonseca and would not have been possible without his contacts.

Flores said that he established Fonseca's deliverables. He said that he assigned Fonseca to work with the Gang Reduction Program directors in Los Angeles, Miami, Wisconsin, and Richmond, and to reach out to faith-based groups, to provide support and technical assistance, and to determine what needed to be done. Flores stated that Fonseca's deliverables also changed over time as circumstances warranted. He said that as the process of working the gang initiative moved forward and the end of the Bush administration approached he asked Fonseca to handle other tasks, such as coordinating a series of town hall meetings. Flores said he believed Fonseca's contract task order was broad enough to allow for this flexibility.

Flores told the OIG that he was satisfied with Fonseca's overall work performance. In a letter from his attorney dated October 8, 2008, Flores also provided a copy of what he believed to be the database of faith-based community contacts produced by Fonseca as one of the deliverables in his final contract.

However, when the OIG told Flores that Fonseca was paid over \$265,000 for his work at OJJDP, Flores said he had not known that and he said in hindsight the amount of work did not seem to match that amount of compensation. As previously noted, Fonseca failed to submit required activity reports to Aspen during his first six month contract. OJP examined excerpts from the six monthly activity reports Fonseca submitted under the first extension of the contract and found the reports were sketchy and did not support a 40-hour work week. Flores told the OIG that he did not hire Fonseca to write great reports but rather for the work he could do to further the faith-based initiative. Flores added that he attributed any deficiencies in Fonseca's reports to Fonseca's possible difficulties with the English language. Flores said that was the reason he had conversations with Fonseca about his work, rather than relying solely on the reports, so that he could understand what Fonseca was doing.

In addition to interviewing Flores about Fonseca's work, the OIG interviewed several OJJDP employees and the program directors at the four Gang Reduction Program sites to determine what work or services Fonseca provided to OJJDP. Their opinions were mixed about Fonseca's services. Flores told us he strongly supported Fonseca's contributions, as did one special assistant to a Gang Reduction Program site director with whom Fonseca worked. However, other OJJDP employees and program directors did not know what Fonseca did for OJJDP and could not point to any benefit to OJJDP programs from his work.

The OIG attempted to interview Fonseca, but he declined OIG's request and stated his work was documented in the contract file.

We concluded that the documentation of Fonseca's work was not sufficient, particularly in view of his rate of compensation and the duration of his contract. However, the OIG could not conclude based on all the evidence that Fonseca's contract was a misuse of OJJDP funds.

Allegations Related to Flores's Award of Discretionary Grants

Another allegation was that Flores abused his authority as administrator by recommending grant awards to organizations that received lower scores in the peer review process. Flores's recommendations for allocation of discretionary grant funds for FY 2007 were approved by then-AAG Regina Schofield. OJP's Office of General Counsel told the OIG that the Administrator of OJJDP has discretion to recommend to the AAG for OJP that a grant be awarded to any qualified applicant, and that Flores was not bound to recommend grant awards to the applicants that were given the highest scores in the peer review process.

However, articles in a youth services trade magazine and website raised three examples of alleged improper award recommendations: an award to the World Golf Foundation's First Tee Initiative (World Golf), whose honorary chair is former President George H. W. Bush; an award to the Best Friends Foundation, a non-profit organization led by Elayne Bennett, the wife of William Bennett, a former cabinet official under Presidents Reagan and George H. W. Bush; and an award to Victory Outreach, a faith-based organization that had hired a former official with the White House's Office of Faith-Based and Community Initiatives. The articles cited internal OJJDP records showing that these organizations, as well as several others, received OJJDP awards even though peer reviewers rated their proposals much lower than proposals from other organizations that did not receive awards.

As noted above, Flores testified about these allegations at the House hearing on June 19, 2008. He told the House Oversight Committee that he was not strictly bound to award grants to the applicants ranked highest in the peer review process. He further stated that "While some may disagree with my [award] decisions, they were made in accordance with the law, within Department rules, and in good faith to address the needs of our children who find themselves in the juvenile justice system or at risk of contact with it."

The OIG conducted an audit of OJJDP's 2007 discretionary grant award process related to how Flores recommended FY 2007 grants. The OIG's audit found that Flores reviewed the peer review results and made award recommendations to OJP AAG Schofield. The audit confirmed that Flores recommended awards to several organizations whose proposals received scores that were lower than those submitted by other organizations that did not receive award recommendations. Flores told our auditors that although he considered peer review scores in evaluating proposals, he did not use the scores as the sole basis for selecting applicants.

However, although Flores prepared memoranda for the approval of the AAG to outline his award recommendations, our audit found that OJP and OJJDP did not maintain any documents to show why specific award decisions were made. While former AAG Schofield and Flores provided to us reasons for their award selections, we found no contemporaneous documentation that either corroborated the reasons for their decisions or identified whether the World Golf Foundation, the Best Friend Foundation, or Victory Outreach received awards for subjective or personal reasons. Flores told us that he did not have personal ties with any official or representative with organizations that he recommended for awards. Further, Flores stated that his meetings and interactions with officials from these groups did not have any impact on his award decisions.

As noted above, Flores told our auditors that he chose not to base his award recommendations solely on the peer review score. Flores provided four reasons for this decision:

- Flores said that individual peer reviewers only evaluate seven to eight applications each, which is a fraction of the total number of applications received under each program announcement. He said that the peer review recommendations present the OJJDP Administrator with a snapshot of the strengths and weaknesses of each application. Flores stated that as the OJJDP Administrator, he was best suited to select awards because he could see the “larger picture” of the proposal universe.
- Flores said that peer reviewers do not consider whether a proposal could receive funding under another, more specific program announcement. OJJDP intended to use the grant program at issue – the National Juvenile Justice Programs -- to support national-scope youth service programs. Flores said that he did not want to use this program’s money to support initiatives that could be funded by other OJJDP grant programs. Flores said that he therefore used his authority as Administrator to deny funding to such narrowly focused proposals from the broad-scoped National Juvenile Justice Programs pool even if the proposals received high peer review rankings.
- Flores stated that peer reviewers did not necessarily consider important Presidential initiatives when assessing applications. Flores cited the Presidential initiative to encourage faith-based and community organizations to apply for federal awards. Flores said he believed it was important to ensure that faith-based initiatives received OJJDP support. Therefore, he recommended Victory Outreach’s proposal, which was ranked 42 of 104, for a National Juvenile Justice Programs award, and Messiah College’s proposal, which was ranked 84 of 237, for a Mentoring Initiatives award, in part because each ranked among the highest proposals submitted by faith-based organizations.
- Flores also said that peer review results did not consider the unique nature of the FY 2007 funding process in that there were no earmarks and any organization that received an award may not be able to receive continuing support in subsequent fiscal years. Flores said that when making his award recommendations, he anticipated enhanced earmark activity in subsequent fiscal years and that, as a result, he excluded proposals if they risked requiring OJJDP support for more than one fiscal year.

The audit concluded that the Juvenile Justice and Delinquency Prevention Act did not require either the OJJDP Administrator or the AAG to make award decisions based on peer review scores. In addition, our audit did not identify any other law or regulation that required peer review results to be the sole determinant of grant awards. Yet, because OJP and OJJDP devote considerable resources to conduct peer reviews of grant proposals, we concluded that that they should ensure that the peer review process is transparent and a significant factor in

making award decisions. Because neither OJP nor OJJDP maintained documents showing why award decisions were made, we could not corroborate Flores's stated reasons for his award recommendations or disprove the allegations that subjective or personal factors improperly influenced his decisions.

In part because of the scrutiny received by OJJDP's FY 2007 grant award process, former Associate Attorney General Kevin O'Connor issued a memorandum in May 2008 directing OJP to document all discretionary funding recommendations and future award decisions. When OJP and OJJDP officials select lower-ranking proposals over those that received higher peer review scores, they now must document their contemporaneous reasons for deviating from peer review rankings.

Allegation that Flores Accepted Payment of Golfing Fees

When Flores testified before the House Committee on Oversight and Government Reform, he was questioned about having played a round of golf with World Golf Foundation officials while attending the First Tee Network Meeting in February 2006 as a guest speaker. The meeting's agenda included a golf outing on the last day, and Flores stated that on the night before, World Golf officials asked him to participate. Flores told the House Oversight Committee that he tried to pay for the round at that time, but that World Golf officials told him they would send him an invoice later. Flores stated that he subsequently followed up his request and paid \$159 in golf fees. Flores provided a receipt for the golfing fees to the Committee showing that he paid the First Tee \$159 on June 18, 2008, more than two years after the event and the day before his testimony.

Flores said that the golf outing at the First Tee meeting was a prepaid event and his playing had not been planned in advance. He said this was the reason the conference personnel could not accept his payment at the time. The OIG confirmed with the event's sponsor that this was likely the case. Flores also said he requested that the conference organizers send him an invoice for the applicable fees, but that he did not receive a bill. Flores's attorney said that he contacted the First Tee conference organizers in June 2008 and requested that they send Flores an invoice so that he could pay the fees. Flores asserted, through his attorney, that he had requested that an OJJDP employee obtain an invoice after the event, but he did not receive a bill at that time.

The OIG was unable to interview the employee Flores reportedly asked to obtain the invoice because he is deceased. Flores's Special Assistant told us that she does not recall Flores having asked her to contact First Tee to obtain a bill for the golf outing.

The OIG determined that the First Tee conference was sponsored by the World Golf Foundation, which as noted above was one of the organizations that received an OJJDP discretionary grant award in FY 2007 that drew criticism on the ground that improper factors influenced Flores's award recommendation decisions. World Golf, through its First Tee Initiative, had also received "earmarked" - legislatively directed - grants from OJJDP each year from FY 2003 to FY 2006. Flores denied any connection between his World Golf award recommendation and what he considered to be limited contacts with this group.

However, federal regulations prohibit government employees from accepting from a prohibited source gifts in excess of \$20. *See* *Accepting Gifts*, 5 CFR 2635.202-204. A prohibited source includes persons and entities that do business or seek to do business with the employee's agency. The OIG concluded that Flores violated this regulation by not paying the fees for his round of golf, which was valued by the World Golf Foundation at \$159, until more than two years after he played. World Golf's First Tee Initiative was an OJJDP grantee at the time Flores participated in the golf outing with World Golf officials without paying for it. Moreover, during FY

2007, after Flores played golf at the 2006 World Golf conference and approximately one year before he paid for the round of golf, Flores recommended World Golf's First Tee Initiative for an OJJDP discretionary grant award. Although Flores ultimately reimbursed the World Golf Foundation for the cost of the fees, he did not make this payment until more than two years after the event and on the eve of his congressional testimony, as well as almost a year after he had taken action that benefitted the Foundation. While we cannot conclude that the round of golf with World Golf officials affected Flores's decision, the OIG concluded that his actions violated federal ethics rules.

Allegation That Flores, DeKonty, and ██████████ Directed ICF International to Engage Subcontractor Russ Reid in Violation of Federal Acquisition Regulations

The OIG also investigated the allegation that Flores, DeKonty, and ██████████ inappropriately directed a contractor, ICF International, to subcontract with a specific marketing and communications firm, Russ Reid, in violation of the FAR and OJP Office of Administration Procurement Operating Procedures.

Applicable Regulations

The FAR provides that no contract shall be entered into unless the Contracting Officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. *See* Contracting Officer Authority, FAR 1.602-1. In addition, under some circumstances, consent of the Contracting Officer is required before a contractor may enter into subcontracts. *See* Consent Requirement, FAR 44.201-1. In this case, the Contracting Officer's consent was required for an ICF subcontract because subcontracting was not part of ICF's contract. Indeed, the contract award to ICF was based upon the benefits of ICF's in-house resources, eliminating the need for "complicated subcontracting agreements, which can lead to chain of command confusion, cross-team communication failures, break down in quality control, and cost inefficiencies." The Contracting Officer responsible for consent must review the subcontract request and supporting data and determine that the selection of the particular services is technically justified. In addition, the Contracting Officer is required to ensure that there was adequate price competition, or in its absence properly justified documentation, to support the subcontractor's selection, and that the prime contractor performed adequate cost analysis and obtained accurate, complete, and current cost data, including any required certifications, from subcontractors. *See* Considerations, FAR 44.202-2.

The FAR also included policies and procedures for contracting without providing for full and open competition. One of the several circumstances permitted under the FAR for contracting without full and open competition is referred to as a "sole source" justification, which exists when only one responsible source will satisfy an agency's requirements. FAR 6.302-1. The requirements and approvals for application of a "sole source" justification are described in FAR sections 6.303 and 6.304. According to FAR section 6.304 (c), a justification for contracting by other than full and open competition must be approved in writing.

OJP Office of Administration Procurement Operating Procedure No. 08-01 prohibits Contracting Officer's Technical Representatives (COTR) from participating in negotiations with a contractor outside of the presence of a Contracting Officer. It also requires that COTRs report suspected conflicts of interest or other improper conduct by a contractor or related to a contract to the Contracting Officer and relevant OJP offices. Failure to report suspected conflicts is a breach of the COTR's duties.

The Russ Reid Subcontract

Flores said that during late summer and early fall 2007 he wanted OJJDP to conduct training for faith-based organizations on sustainability without federal funds. ██████ told us that this type of project was covered by OJP's contract with ICF International to provide technical assistance and training, to coordinate conferences and provide experts to OJP as needed. ██████ was OJJDP's COTR for the ICF contract. ██████ also said that at the time, he believed ICF was capable of providing the sustainability training.

According to Flores and ██████ Flores's chief of staff DeKonty arranged a meeting for Flores with executives from Russ Reid about the sustainability project. Representatives from ICF also attended the meeting. According to Flores, DeKonty knew someone from Russ Reid because they had worked "on the Hill years ago." Flores said he did not know the position of the person, or the nature of the relationship with DeKonty. ██████ also told us that "it was clear that [DeKonty] knew the Russ Reid people."

Flores said he was very impressed with Russ Reid's experience and capabilities and wanted to hire them for the sustainability training. Flores and ██████ both recall that after the meeting, Flores told ██████ that he wanted to hire Russ Reid. Flores said he relied on ██████ to handle the mechanics of contracting with Russ Reid.

██████ said DeKonty told him she wanted to award Russ Reid a \$210,000 contract for putting together the sustainability training for faith-based organizations. ██████ said he told DeKonty that OJP's Contracting Officer would not approve the Russ Reid subcontract of that size. ██████ also said DeKonty told him she did not want him to talk to AMD until they "got it to a better place" and directed him to bypass the Contracting Officer. ██████ said he then engaged in direct negotiations with Russ Reid for the value and deliverables of the subcontract without involving the OJP's Contracting Officer, which he admitted violated his obligations as COTR under OJP procurement operating procedures. However, ██████ said he negotiated a contract that was for significantly less cost than the original proposal and he directed ICF to notify the Contracting Officer and receive the Contracting Officer's approval for the subcontract. ██████ said he prepared on ICF's behalf the "sole source" justification memorandum advocating that a subcontract be awarded to Russ Reid without competition even though he said that at the time he did not believe Russ Reid was uniquely qualified and possessing special skills such that a "sole source" contract was justified. ██████ nevertheless prepared the "sole source" justification memo and DeKonty approved it.

██████ claimed to us that after attending the training Russ Reid provided, he believed Russ Reid was uniquely qualified and its product was superior to what ICF could have provided.

Contrary to the requirements of the FAR, OJP's Contracting Officer did not learn of the Russ Reid subcontract until after ICF had engaged Russ Reid.

OJP's Contracting Officer told us that when she learned of the Russ Reid subcontract after-the-fact she looked into what had happened. She said she requested and obtained information from both ICF and ██████ ICF officials told OJP that ICF was capable of providing these services but engaged Russ Reid at the direction of the COTR.

██████ said that the Contracting Officer contacted him in about May 2008 in connection with an inquiry by OJP's AMD into ICF's subcontract with Russ Reid. He said he told DeKonty about the AMD inquiry and that

he was gathering relevant documents to provide to AMD. ██████ said DeKonty instructed him not to provide the materials to AMD, but to give them to her for her review. ██████ said that after DeKonty reviewed the binder of documents, she told him to remove e-mails showing direct interaction between ██████ and Russ Reid because “it would not look good.” ██████ said he removed the e-mails between himself and Russ Reid representatives.

██████ told the OIG that he breached his duties under OJP Office of Administration Procurement Operating Procedures and the FAR by engaging in direct negotiations with Russ Reid outside the presence of a Contracting Officer, preparing a false “sole source” justification memo, and following DeKonty’s direction to bypass the Contracting Officer and withhold information from AMD because he feared reprisal by DeKonty if he did not follow her instructions. He said “if you fell in the wrong side of [DeKonty] you were relegated.” He explained further that it would have been a “career killer” for him to have confronted DeKonty, and he identified three persons who had suffered consequences for doing so. However, he also failed to notify the Contracting Officer of DeKonty’s improper conduct relating to the Russ Reid subcontract, which was a further violation of OJP procurement procedures. ██████ was relieved of COTR duties as a result of this incident.

In February 2009 ██████ left the Department. He is now employed at the Department of Homeland Security, Customs and Border Protection.

Flores told the OIG that he did not have knowledge of government procurement requirements and was not aware of the process by which ██████ accomplished the subcontract with Russ Reid. He said he told ██████ that he wanted to hire Russ Reid, but he did not tell him to bypass the Contracting Officer or AMD. Flores acknowledged that he was aware DeKonty brought Russ Reid in for the meeting because she knew someone at the firm. He said he did not know the position at the firm of the person DeKonty knew, or the nature of their relationship.

DeKonty Declined to be Interviewed

The OIG attempted to interview DeKonty, but she declined OIG’s request through her attorney.

OIG’s Conclusions Regarding the Russ Reid Subcontract

We determined that ██████ engaged in direct negotiations with Russ Reid related to the value and deliverables for the Russ Reid subcontract without involving OJP’s Contracting Officer, in violation of FAR section 1.602-1, 44.201-1, 44-202-2 and OJP Office of Administration Procurement Operating Procedure No. 08-01. ██████ also prepared on ICF’s behalf a document advocating that the contract award to Russ Reid be exempt from competition, purportedly because Russ Reid was “uniquely qualified” to handle the sustainability training, even though ██████ did not believe at the time that Russ Reid was uniquely qualified and possessing special skills such that a sole source contract was justified. ICF personnel confirmed that it was capable of handling the training for which Russ Reid was hired. Preparing this false “sole source” justification memo violated FAR sections 6.302-1, 6.303, and 6.304. ██████ said he handled the ICF/Russ Reid subcontract in this manner at DeKonty’s direction, and he did so because he feared reprisal by her if he did not follow her instructions. However, ██████ failed to report the irregularities in the Russ Reid contracting process to his Contracting Officer as COTRs are required to do under OJP Office of Administration Procurement Operating Procedure No. 08-01.

As noted above, DeKonty solicited Russ Reid for the sustainability training project for faith-based organizations because she knew an executive at the firm. Our investigation examined whether DeKonty's involvement in the process leading to the subcontract with Russ Reid constituted a conflict of interest. We found that DeKonty committed misconduct with regard to the Russ Reid contract with the following actions. DeKonty arranged for Russ Reid personnel to meet with Flores about a training and assistance project covered under ICF's contract with OJP. When ██████ told DeKonty that a subcontract with Russ Reid would not be approved by OJP's Contracting Officer, DeKonty directed OJJDP's COTR to bypass OJP's Contracting Officer and AMD and negotiate the terms of the subcontract directly with Russ Reid. ██████ prepared a false "sole source" justification memo, which was approved by DeKonty. DeKonty directed ██████ not to cooperate with AMD's internal inquiry into the circumstances of the Russ Reid subcontract. In particular, after DeKonty reviewed a binder of documents that ██████ prepared to provide to AMD, she told him to remove e-mails showing direct interaction between ██████ and Russ Reid because "it would not look good."

Finally, we were limited in our ability to determine the precise nature or the relationship between DeKonty and Russ Reid because DeKonty had left the Department after having refused to testify before the House Oversight Committee and declined to be interviewed by us. However, the Russ Reid executive who DeKonty had previously worked with told us that he did not believe DeKonty had any financial interest in the company and that he did not have a personal relationship with her.

Regardless of whether DeKonty's involvement in the Russ Reid subcontract constituted a conflict of interest, we concluded that by not inquiring further into the nature of DeKonty's relationship with Russ Reid, Flores was not sufficiently sensitive to the potential conflict of interest or the appearance of such a conflict.

Other Alleged Misconduct by Flores

Misuse of Professional Staff for Babysitting

We investigated the allegation that Flores asked career staff to babysit his children on a number of occasions when he brought them to the office. Flores told the OIG that he brought his children to the office on several occasions, usually during summer. Flores's Special Assistant said that Flores's son was ██████ and his daughters were ██████. Flores said he brought his son to the office on about five or six occasions and his daughters about twice. He stated he did not ask his staff to babysit his children. He said that his Special Assistant offered to have lunch with them two or three times, and took them to lunch on those occasions.

The OIG interviewed Flores's Special Assistant and a former secretary for OJJDP about this allegation because they were alleged to be the OJJDP staff asked by Flores to babysit his children at the office. They said Flores had brought his children to the office, one at a time, not more than about six times since he started at OJJDP in 2002. They both denied that Flores had asked them to babysit and said the children usually stayed in Flores's office and cared for themselves. The Special Assistant said she had offered to take the children to the cafeteria for lunch. She said the children had money and paid for their food. The former OJJDP secretary also said she once voluntarily accompanied Flores's son to get a snack at the cafeteria.

In sum, the OIG did not substantiate this allegation. The OIG concluded that Flores did not ask career staff to babysit his children when he brought them to the office.

Flores's Alleged Use of Professional Staff for Work on Personal Résumé

We also investigated whether Flores requested that his Special Assistant work on his résumé. The OIG interviewed the Special Assistant who denied that she helped Flores prepare his résumé or that she worked on it for him. She stated that she had access to Flores's résumé on her computer because she regularly provided it to event coordinators when, for example, Flores was scheduled to deliver a speech at conferences or meetings. She said that Flores prepared and edited his own résumé.

Flores denied that he requested his Special Assistant to work on his résumé.

In sum, the OIG concluded that Flores did not request his Special Assistant to work on his résumé.

Flores's Alleged Failure to Appear for a Speech

We investigated the allegation that Flores traveled to Las Vegas at OJJDP expense to make a speech at the 2004 conference of the National Council of Juvenile and Family Court Judges, but failed to make the speech.

Flores told the OIG that he became ill after having breakfast that morning and was unable to present his speech at the scheduled time of 10:00 a.m. However, he said that he presented his speech to the conference attendees that same day during lunch. Flores also said that he subsequently sent a formal letter of apology to the Council.

The OIG confirmed with the organizers of the conference that Flores delivered a speech during the lunch session of the conference on the same day it had been scheduled.

Responses to Report

On April 15, 2009, the OIG provided a draft of this report to Flores and [REDACTED] the subjects of the investigation who had agreed to be interviewed by the OIG, for their comments. We received responses from both. After review of their responses, we did not believe that any of the conclusions of this report warranted change. Moreover, we believe that their comments did not address our key findings. For example, although Flores denied that he accepted a \$159 gift of a round of golf from the World Golf Foundation, an OJJDP grantee, his response does not adequately explain why he did not pay for the round until the day before his testimony before a congressional oversight committee over 2 years after he played golf at a World Golf conference. Similarly, while [REDACTED] response refers to additional information about the contract at issue, some of which we have added to the report where relevant, this information does not alter our finding that he violated his obligations as a COFR under the FAR and internal OJP operating procedures not to engage in direct negotiations for the value and deliverables of a contract without involving OJP's Contracting Officer. Indeed, [REDACTED] admitted to us that he violated such obligations. The full responses of Flores and [REDACTED] to this report are included in the Appendix.

SUMMARY

The OIG investigation substantiated the allegation that Flores did not follow appropriate contracting procedures in the hiring of Rene Fonseca as a consultant for OJJDP. Flores, through OJJDP employees, directed OJP contractors Aspen and DB Consulting to hire Fonseca as a consultant after his other efforts to hire Fonseca were denied. Fonseca was paid about \$281,000 by OJJDP from November 2004 to July 2007. Our investigation concluded that Fonseca's contract constituted a personal services contract prohibited by the FAR, Part 37.104, because he was assigned deliverables by Flores in addition to those specified under his contract, he reported directly to Flores, and was supervised directly by Flores rather than by his employer, the prime contractor.

The OIG investigated the allegation that Fonseca's contract amounted to waste and misuse of funds. We concluded that the documentation of Fonseca's work was not sufficient, particularly in view of his rate of compensation and the duration of his contract. However, the OIG could not conclude based on the evidence we were able to uncover, that Fonseca's contract was a misuse of OJJDP funds. However, our investigation was not complete because Fonseca refused to be interviewed by us, and we could not compel his cooperation.

This investigation and an OIG audit examined allegations that improper considerations influenced Flores's selection of grant awards during the FY 2007 discretionary award process. The allegations noted that Flores awarded OJJDP grants to entities whose OJJDP peer reviews were rated much lower than proposals from other organizations that did not receive awards. We concluded that because neither Flores nor then-OJP Assistant Attorney General Regina Schofield maintained documents showing why the FY 2007 OJJDP discretionary award decisions were made, we could not corroborate Flores's stated reasons for his award recommendations or disprove the allegations that subjective or personal factors improperly influenced his decisions. Yet, because OJP and OJJDP devote considerable resources to conduct peer reviews of grant proposals, our audit concluded that OJP and OJJDP should ensure that the peer review process is transparent and a significant factor in making award decisions.

We substantiated the allegation that Flores did not pay for a round of golf he played with an OJJDP grantee until over two years after playing the round. Federal regulations prohibit government employees from accepting from a prohibited source gifts in excess of \$20. *See* Accepting Gifts, 5 CFR 2635.202–204. A prohibited source includes persons and entities that do business or seek to do business with the employee's agency. The OIG concluded that Flores violated these regulations by not paying for his round of golf, which was valued by the World Golf Foundation at \$159, until more than two years later. World Golf's First Tee Initiative was an OJJDP grantee at the time Flores participated in the golf outing. Moreover, during FY 2007, after Flores played golf at the 2006 conference and approximately one year before Flores paid for the round of golf, Flores recommended World Golf's First Tee Initiative for an OJJDP discretionary grant award. Although Flores ultimately reimbursed the World Golf Foundation for the cost of the fees, he did not make this payment until more than two years after the event and on the eve of his congressional testimony, almost a year after he had taken action that benefitted the Foundation.

The OIG substantiated the allegation that Flores, DeKonty, and ██████████ inappropriately directed a contractor, ICF International, to subcontract with a specific marketing and communications firm, Russ Reid, in violation of OJP Office of Administration Procurement Operating Procedures and applicable provisions of the FAR. ██████████ acknowledged that he breached his duties as COTR under OJP Office of Administration Procurement Operating Procedures and the FAR by engaging in direct negotiations outside the presence of a Contracting Officer and preparing a false "sole source" justification memo. We also found that DeKonty

committed misconduct with regard to the Russ Reid contract by, among other things, directing ██████████ to bypass OJP's Contracting Officer and its AMD and negotiate the terms of the subcontract directly with Russ Reid, and by instructing ██████████ to withhold e-mails showing direct interaction between ██████████ and Russ Reid from an AMD internal inquiry because "it would not look good." Although our investigation was limited in our ability to determine whether DeKonty's involvement in the Russ Reid subcontract constituted a conflict of interest, we concluded that Flores was not sufficiently sensitive to the potential conflict of interest or the appearance of such a conflict.

The OIG investigation did not substantiate other allegations that Flores asked career staff to babysit his children when he brought them to the office, that Flores had his Special Assistant work on his résumé, and that Flores went to Las Vegas but failed to make a speech there.

The OIG has completed its investigation and is providing this report to OJP for appropriate action. In addition to the recommendations contained in the OIG audit of OJJDP's FY 2007 discretionary grant award process, we make the following recommendations:

OJP should ensure that appropriate training and controls are in place for political appointees so that they have an understanding of fundamental federal contracting regulations;

This report should be included in Flores's personnel file and his violation of the gift regulations should be considered if he seeks federal employment in the future;

This report should be included in DeKonty's personnel file and her misconduct should be considered if she seeks federal employment in the future; and

During our investigation we learned that ██████████ was relieved of COTR duties by OJP as a result of this incident. ██████████ left the Department in February 2009. He is now employed at the Department of Homeland Security, Customs and Border Protection. This report should be included in ██████████ personnel file and OJP should consider providing notice of ██████████ misconduct to the Department of Homeland Security.

APPENDIX

BERKE & ASSOCIATES PLLC

www.berkelawdc.com

April 17, 2009

The Honorable Glenn A. Fine
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W., Suite 4706
Washington, D.C. 20530-0001

Dear Inspector General Fine:

On behalf of my client, the Honorable J. Robert Flores, thank you for granting us the opportunity to review the draft of the OIG's Investigative Report (Report) regarding allegations made against Mr. Flores during his tenure as Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). We also appreciate the opportunity to comment on the Report.

Mr. Flores has spent most of his professional career in the juvenile justice world as an advocate for children. He has also spent the vast majority of his career as a public servant, including eight years as a career prosecutor with the Child Exploitation and Obscenity Section within the Justice Department's Criminal Division. He served honorably as the Administrator of OJJDP from 2002 until the final day of the Bush Administration.

We believe it is important to note that the OIG's investigation was triggered by "anonymous" allegations. From the outset of the investigation, Mr. Flores pledged to cooperate fully and voluntarily. He maintained that commitment throughout the course of the office's review. We were pleased that the OIG concluded its investigation without any further action to be taken with respect to Mr. Flores. We were also pleased to learn that the majority of allegations were determined to be unsubstantiated.

It is not practicable in this letter to respond to every instance of disagreement we have with the Report. Conclusions drawn in the Report by the OIG on five of the allegations, however, compel us to submit the following general comments for the record:

- 1.) Rene Fonseca Hiring and 2). Contract:** Many people were involved in the hiring of Mr. Fonseca, including the granting of the waiver. The Report seems to imply that because the waiver was not approved at the outset, it was improperly granted in the end. Others within the Department eventually determined the waiver, his hiring, and the contract were appropriate. As Mr. Flores has stated, he was satisfied with the work undertaken by Mr. Fonseca. He was not ultimately responsible for Mr. Fonseca's paperwork or timesheets. To Mr. Flores' knowledge, the hiring of Mr. Fonseca and the execution of his contract were done through proper channels consistent with federal law, regulation, and DOJ policy. He did not consider Mr. Fonseca's contract to be a personal services contract.

The Honorable Glenn A. Fine

April 17, 2009

Page 2 of 2

- 3.) **Discretionary Grant Awards in 2007:** Mr. Flores' decisions on the 2007 discretionary awards were made in accordance with the law, within DOJ rules, and in good faith to address the needs of children who find themselves in the juvenile justice system or at risk of contact with it. No confusion about his recommendations was ever voiced by AAG Schofield, and the process followed was also consistent with law, regulation, and policy. He is proud that in 2007, OJJDP issued more than 33 solicitations for \$382 million dollars, to support programs across the broad spectrum of its responsibilities. An objective review demonstrates that no important area of juvenile justice was overlooked and awards were geographically diverse as well. We recognize that the investigation was unable to corroborate this allegation against Mr. Flores or dispute his testimony. Mr. Flores firmly recognizes that OJP's grant process was in need of improvement, revealed by time constraints and the unique circumstances occasioned by Congress's decision to move away from earmarks in 2007. He welcomed the Department's recommendation for the processing of future discretionary grant awards.
- 4.) **ICF and Russ Reid Contract:** There is no evidence of any conflict or enrichment by anyone, including Mr. Flores, with respect to the ICF contract and subcontract to Russ Reid. Yet, somehow, the Report concludes that he should have been more sensitive to a conflict that did not exist. Mr. Flores relied on the advice of career staff, including his COTR, on the awarding of these contracts. There is no evidence that he was aware that his COTR had exceeded his authority; indeed there are many emails in which he defended his COTR because he had assured Mr. Flores that he had properly followed all rules and regulations. Mr. Flores fully and completely cooperated with the internal inquiry.
- 5.) **Repayment to the World Golf Foundation:** Mr. Flores never played a round of golf at the World Golf Foundation for free in 2006. He never considered the round of golf a gift. It was always his intent to pay for the round of golf with personal funds. He attempted to pay for the round at the time he played but the foundation was unable to accept payment. He instructed a member of his staff to follow up with the foundation on many occasions so payment could be made. He ultimately was able to effectuate payment in 2008.

Thank you again for the opportunity to review and comment on the Report. We request that this letter be attached to the final product as part of the official record.

Sincerely,



Elliot S. Berke

To: Office of the Inspector General

From: [REDACTED]

Subject: OIG Report, Case# 2008-001884, Dated 4/14/2009

Date: April 17, 2009

There are several inaccuracies and omissions in the Office of the Inspector General (OIG) Report, Case# 2008-001884, dated April 14, 2009.

1) The report fails to detail that [REDACTED] COTR, directed ICF on numerous occasions, both verbally and in writing, to receive approval/consent from the Contract Officer (CO) on all subcontracts processed under the ICF TTA contract. This included the Russ Reed partnering agreement, sole source justification, and budget. The Office of the Inspector General (OIG) is in possession of emails sent from [REDACTED] to both ICF and Russ Reed Corporation staff detailing the need for CO approval on all associated task orders and budgets. However, the OIG report does not reference any of these emails. Additionally, ICF did, as instructed by the COTR, provide copies of relevant task orders and subcontracting agreements to the CO for review. The CO never contacted the COTR or ICF with questions about these documents upon their receipt. Also, all project tasks, including Administrator Flores' direction to partner with Russ Reed, were clearly detailed in ICF monthly progress reports which were submitted directly to the CO for review and approval. Upon receipt of the progress reports, the CO did not contact the COTR or ICF with questions or concerns.

2) The report states that ICF was fully capable of developing/providing sustainability training using in-house resources and did not require outside assistance. This was not the case and [REDACTED] discussed this with OIG investigators on several occasions. ICF developed an earlier training for faith and community based organizations which solely taught attendees how to navigate the Federal funding process. While this training was well received, it did not provide any instruction on sustainability and ICF's later proposals to develop a sustainability module were poor and did not meet the expectations of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). ICF did not have adequate in-house expertise on sustainability training for the specific target population OJJDP was trying to reach. Furthermore, throughout the duration of the contract period, ICF was unable to hire and retain sufficient staff to meet the demands of the contract. The workload placed on ICF was significant and they struggled to meet the needs of OJJDP with existing staffing levels--let alone take on new projects without bringing in outside assistance. In fact, throughout the contract period ICF brought in numerous outside consultants and subcontractors to manage the workload and meet the demands of the contract.

3) The report implies that ICF's contract did not provide for subcontracting. In fact, part of the reason ICF was awarded the training and technical assistance (TTA) contract is because their cost proposal specifically included a very low handling fee to be charged on

other direct costs including all subcontracts. It was often much more cost effective for ICF to subcontract out work instead of accomplishing it with in-house resources. ICF employed a number of outside consultants and subcontractors throughout the tenure of this contract. Additionally, during initial award discussions with Eldred Jackson, head of the Office of Justice Programs (OJP) Acquisitions Management Unit, OJJDP made it very clear they were unhappy with ICF's past performance under a previous OJJDP contract and that the Office intended ICF to partner with outside organizations to accomplish the work required under this contract. ICF is one of many TTA providers that OJJDP used, and it should be noted that no single provider is capable of meeting the myriad of training and technical assistance needs presented by the juvenile justice population. In fact, the very essence of training and technical assistance is collaboration and partnership building. The statement of work ICF operated under for this TTA contract clearly stated that they were to be both a provider and broker of services and that they would be required to partner with numerous outside organizations to accomplish the work of OJJDP. OIG is in possession of this statement of work; however, the OIG report fails to address anticipated partnering requirements.

4) The OIG report implies that a subcontract of \$210K was awarded to Russ Reed. In fact, the subcontract that was awarded was significantly less than this total and the final approved billing costs approved by ICF were even lower. It should also be noted that the budget for the FBCO Sustainability project to include both ICF and Russ Reed's costs for curriculum development and execution of two (2) training conferences targeting approximately 500-750 people per event was approximately half of the budgeted expenses for just one (1) OJJDP training event held in a previous fiscal year by another OJJDP contractor. This earlier event, which was managed by another OJJDP staffer, targeted just one third of the attendees that were targeted under the entire FBCO Sustainability project. Also, the participant evaluations for the Sustainability trainings were rated very highly by training attendees and OJJDP received numerous requests to conduct the training again.

Further clarification or requests for above mentioned materials may be directed to my attorney.

cc:

File