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Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:
DR. ALAN S. RUDOLPH, FORMER SES, FORMER
DIRECTOR, CHEMICAL AND BIOLOGICAL
TECHNOLOGIES DIRECTORATE, DEFENSE THREAT
REDUCTION AGENCY

UNREDACTED

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**REPORT OF INVESTIGATION
DR. ALAN S. RUDOLPH**

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Dr. Rudolph, former Director, Chemical and Biological Technologies Directorate (CB), Defense Threat Reduction Agency (DTRA), improperly acquired human resources for his directorate, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), and engaged in misconduct related to official travel.¹

We conclude Dr. Rudolph improperly acquired human resources for his directorate. We found Dr. Rudolph:

- recruited certain individuals he knew to work for him at DTRA,
- directed a contractor to hire up to 14 of these individuals as subcontractors,
- approved a plan for a university and a Federally Funded Research and Development Center (FFRDC) to hire individuals he selected, expressly for the purpose of detailing them to work for him at DTRA, and
- approved the use of DTRA contracts with the university and FFRDC to pay their salaries while they waited to become eligible to be detailed.

We found no evidence the university and FFRDC would have hired Dr. Rudolph's selectees absent the plan to detail them to DTRA and absent the arrangement to pay their salaries during their waiting periods.

We determined Dr. Rudolph's actions were inconsistent with the Federal Acquisition Regulation (FAR), which states the Government's preference for obtaining personal services by direct hire rather than by contract. We also determined that by directing a contractor, university, and an FFRDC to hire individuals he selected, Dr. Rudolph violated the Joint Ethics Regulation, which prohibits him from using his position to induce another person to provide a benefit to persons with whom he was affiliated in a nongovernmental capacity. We further determined Dr. Rudolph's actions with respect to the university and FFRDC were inconsistent with certain provisions of Title 5, United States Code (U.S.C.), which provide limited authority to arrange for the assignment of persons from state and local governments, institutions of higher learning, and FFRDCs.

We conclude Dr. Rudolph engaged in misconduct related to official travel. We found Dr. Rudolph personally procured air and rail tickets, failed to use the Government City-Pair

¹ The complaint contained additional allegations that we determined did not require further investigation. We discuss those allegations in Section III of this report.

contract air carrier fares, did not use a Government Travel Charge Card (GTCC) as required, and incurred lodging expenses that exceeded authorized rates but did not provide supporting actual expense authorization (AEA) documentation. We determined these acts and omissions violated the Joint Travel Regulations (JTR), the Financial Management Regulation (FMR), and Under Secretary of Defense for Personnel and Readiness mandates.

We did not substantiate the allegation that Dr. Rudolph (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

By letter dated August 9, 2013, we provided Dr. Rudolph the opportunity to comment on our preliminary report of investigation. In his August 22, 2013, response, prepared by his attorney, Dr. Rudolph disagreed with our conclusion that he improperly acquired human resources for his directorate.² He stated his intent was to “supplement the staff” with contracted consultants and persons detailed from academia and FFRDCs, and highlighted the qualifications of the persons he identified. He stressed that only contractors have the authority to hire contractor personnel, and stated the contractors did not hire all the persons he identified. Dr. Rudolph also asserted his directorate funded the contracts with the university and FFRDC for legitimate science and technology (S&T) purposes.

Dr. Rudolph also disagreed with our conclusion that he engaged in misconduct related to official travel, but did not deny that he procured his own tickets, failed to use contract air carriers, and traveled without a GTCC. He blamed his failure to use a GTCC on ignorance of the requirement and a lack of time to complete required training, and intimated he did not need to obtain AEAs. Dr. Rudolph noted the Government has not reimbursed him for several trips and agreed to pay “any money owed to the Government as a result of” our analysis “for an individual trip if not offset by what is owed to him.” After considering Dr. Rudolph’s response and interviewing three of the additional witnesses Dr. Rudolph suggested, we stand by our original conclusions.

We recommend the Director, DTRA, (1) determine the amount, if any, the Government is obliged to pay to Dr. Rudolph for unreimbursed travel expenses; (2) take measures to ensure DTRA officials appropriately exercise authorities to arrange for the assignment to DTRA of persons from state and local governments, institutions of higher learning, and FFRDCs; and (3) take action to ensure DTRA senior officials conducting official travel possess and use a GTCC as required. We also recommend the Director, Office of Personnel Management (OPM) place our conclusions in Dr. Rudolph’s permanent personnel record.

This final report sets forth our findings and conclusions based on a preponderance of the evidence.

² While we have included what we believe is a reasonable synopsis of Dr. Rudolph’s response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated Dr. Rudolph’s comments where appropriate throughout this report and provided a copy of his full response to the cognizant management official together with this report.

II. BACKGROUND

DTRA is a combat support agency of the U.S. Department of Defense (DoD) with headquarters at Fort Belvoir, Virginia. The Director, DTRA, reports to the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs, who reports to the Under Secretary of Defense for Acquisition, Technology and Logistics. DTRA's mission is to safeguard the United States and its allies from weapons of mass destruction (WMD), including chemical, biological, radiological, and nuclear weapons and high-yield explosives (CBRNE), by providing capabilities to reduce, eliminate, and counter the threat and mitigate its consequences.

DTRA uses Broad Agency Announcements (BAAs) to solicit ideas for applied research and advanced technology development with the goal of awarding contracts for projects that can transition technology to joint acquisition programs. CB's solicitation for fiscal years 2012-2013 focuses on physical S&T, medical S&T, threat agent science, and information systems capabilities development.

Dr. Rudolph was the Director, CB, from August 30, 2010, through February 9, 2013.

III. SCOPE

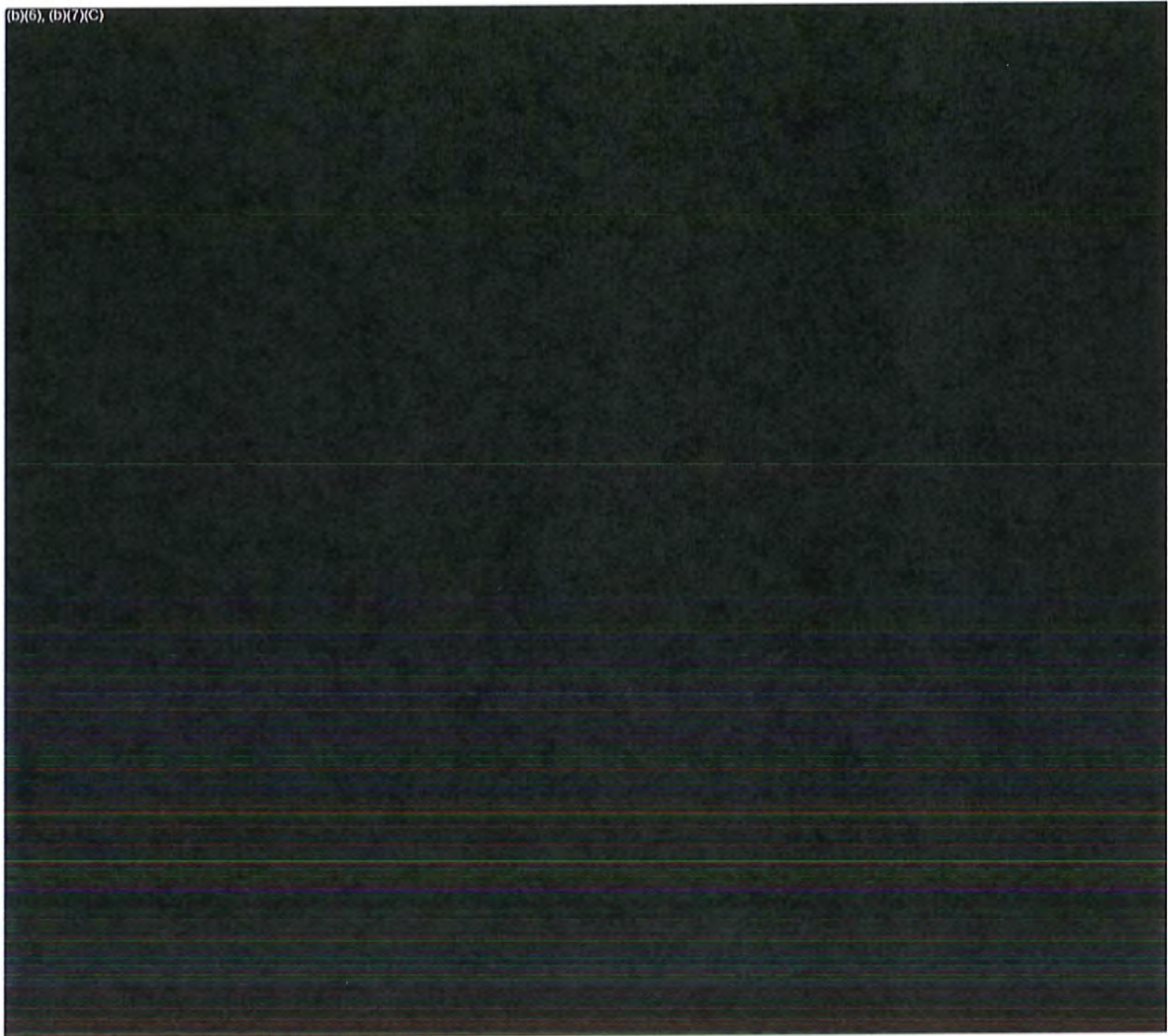
We interviewed 15 witnesses and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) We reviewed travel orders, vouchers, receipts, emails, and other relevant documents, as well as applicable statutes, regulations, and policies.

On advice of counsel, Dr. Rudolph refused to allow us to interview him for this investigation unless we granted him immunity from potential criminal liability for the matters under investigation. We did not grant his request and wrote this report without the benefit of his testimony.

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)



IV. FINDINGS AND ANALYSIS

A. Did Dr. Rudolph improperly acquire human resources for his directorate?

Standards

Title 5, U.S.C., Section 2301, "Merit system principles"

Section 2301(b) (1) states recruitment should be from qualified individuals and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition, which assures that all receive equal opportunity.

³ (b)(6), (b)(7)(C)



Section 2301(b) (4) states all employees should maintain high standards of integrity, conduct, and concern for the public interest.

Title 5, U.S.C., Section 3372, "General provisions"

Section 3372 provides for the head of a Federal agency to arrange for the assignment of an employee of a State or local government, an institution of higher learning, or an "other organization" to his agency for work of mutual concern to his agency and the employee's organization that he determines will be beneficial to both.

Title 5, C.F.R., Section 334.102, "Definitions"

For the purposes of participation in an Intergovernmental Personnel Act Mobility Program, an employee is an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher learning, or other eligible organization. An Federally Funded Research and Development Center (FFRDC) is an eligible organization.

DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 1, 1993, including changes 1-6 (March 23, 2006)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General provisions"

Section 2635.101, "Basic obligation of public service," provides general ethical principles applicable to every employee. Subsection 2635.101(b)(7) states employees shall not use public office for private gain. Subsection 2635.101(b)(8) states employees shall act impartially and not give preferential treatment to any private organization or individual. Subsection 2635.101(b)(9) states employees shall protect and conserve Federal property and not use it for other than authorized purposes. Subsection 2635.101(b)(14) states that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in Part 2635.

Subpart G, "Misuse of position"

Section 2635.702, "Use of public office for private gain," states, "An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity."

Federal Acquisition Regulation (FAR), Part 37.104, "Personal services contracts"

Subpart 37.104 (a) states, "A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required 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, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract."

Facts

The complaint stated Dr. Rudolph hired his friends at DTRA by granting unauthorized preferences.

Directing a Prime Contractor to Use Specific Subcontractors

Prior to January 2012, The Tauri Group, LLC (Tauri) was the prime contractor responsible for providing Advisory and Assistance Services (A&AS) to CB.⁴ Tauri in turn subcontracted work to independent consultants. Tauri's contract contained FAR clause 52.244-5, "Competition in Subcontracting," which required the contractor to select subcontractors and suppliers on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b)(6), (b)(7)(C), testified Dr. Rudolph hand-picked subcontractors and told Tauri, "These are the guys I want to hire." She asserted this was improper because the subcontracting process was supposed to be competitive, and "It [the contract] is not to be used like a personal service [contract, to] go out and pick this guy."

(b)(6), (b)(7)(C) testified to us that, "Through the A&AS support contracts he [Dr. Rudolph] has hired several consultants. Most of those consultant hires have been by name requests." She cited (b)(6), (b)(7)(C) as an example. (b)(6), (b)(7)(C) testified to us he had no knowledge of Dr. Rudolph's role, if any, but confirmed that Tauri contracted with him to support CB. (b)(6), (b)(7)(C).

In an email dated November 1, 2010, Dr. Rudolph stated, "Attached is the resume of someone who I would like to engage to help CB interface with contracting. Let's discuss how to best do this." The attachment was (b)(6), (b)(7)(C) resume. In an email reply dated November 12, 2010, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), told Dr. Rudolph the individual did not meet the minimum requirements to be hired as a subcontractor.

⁴ The CB A&AS contract was re-competed in 2011, and TASC, Inc., replaced Tauri as the prime in January 2012.

(b)(6), (b)(7)(C) testified Dr. Rudolph directed Tauri to hire (b)(6), (b)(7)(C) as a (b)(6), (b)(7)(C). A LexisNexis query indicated (b)(6), (b)(7)(C). The query also revealed that Dr. Rudolph was the owner and former Chief Executive Officer (CEO) of Adlyfe. (b)(6), (b)(7)(C)

5 (b)(6), (b)(7)(C) He continued by stating Dr. Rudolph gave his (b)(6), (b)(7)(C) resume to Tauri, who hired him as a subcontractor. A Tauri document indicated (b)(6), (b)(7)(C) began working for them on (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testified Dr. Rudolph wanted to hire (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) but the Government hiring process took too long to suit Dr. Rudolph. As an intermediate measure, Tauri hired (b)(6), (b)(7)(C) as a (b)(6), (b)(7)(C) while CB continued to work his (b)(6), (b)(7)(C).⁶

In an email, dated August 8, 2011, (b)(6), (b)(7)(C) instructed (b)(6), (b)(7)(C) to obtain (b)(6), (b)(7)(C) services as a (b)(6), (b)(7)(C). In her emailed reply, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) that he lacked the authority to direct such an action. Dr. Rudolph, who was copied on the emails, then directed (b)(6), (b)(7)(C) to "work with Tauri to explore how we can bring him (b)(6), (b)(7)(C) on contract."

(b)(6), (b)(7)(C), (b)(6), (b)(7)(C) testified that on August 17, 2011, a Tauri representative met with (b)(6), (b)(7)(C) and expressed concerns that CB directed Tauri to add consultants to their A&AS contract. (b)(6), (b)(7)(C) told us the Tauri representative gave (b)(6), (b)(7)(C) a list of 14 individuals that Dr. Rudolph wanted Tauri to contract with. According to (b)(6), (b)(7)(C), the Tauri representative stated that many of the people on the list appeared to be Dr. Rudolph's current or former colleagues. (b)(6), (b)(7)(C) testified he conducted internet searches and found that several of the individuals had previous professional relationships with Dr. Rudolph.

The list of names contained the heading, "Consultant Stats," and the names (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), and eight others.

Use of the Intergovernmental Personnel Act (IPA) Authorities

During the course of our investigation, we obtained evidence that indicated the possibility Dr. Rudolph misused the legal authorities provided in the IPA, as found in Title 5, U.S.C., Section 3372. Agencies commonly refer to employees appointed or detailed using these authorities as "IPAs." Under IPA Mobility Program Agreements, Federal agencies may reimburse a detailee's sponsor organization for none, some, or all of the cost of the detailee's

⁵ In cooperation with the Defense Criminal Investigative Service, we determined DTRA did not issue any grants or contracts to Adlyfe, Cellphire, or other companies in which Dr. Rudolph had an interest.

⁶ CB appointed (b)(6), (b)(7)(C). We reviewed the appointment paperwork and did not note any anomalies.

salary and benefits, as specified in an "Assignment Agreement," as defined in 5 C.F.R. Section 334.102.

George Mason University (GMU)

(b)(6), (b)(7)(C) testified Dr. Rudolph orchestrated a plan to cultivate GMU as a source of IPAs for CB. She said GMU hired individuals for 90 days, then CB took them as IPAs.

In an email dated June 27, 2011, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) wrote to Dr. Rudolph, "Can we open the door to bring IPAs through GMU? Short answer is yes. It will take about 2 months lead time. Let's start with 5 or less. Please call for cost details." Later that day, Dr. Rudolph emailed (b)(6), (b)(7)(C), "Swamped, but will call shortly. This is an important vehicle for us to continue the most important part of what I hope will be a transformational tenure at DTRA...People..."

An email indicated (b)(6), (b)(7)(C) understood the plan was not for CB to detail or appoint current, career GMU employees, but to use a contract as a vehicle to hire, pay, and detail the people Dr. Rudolph wanted to hire. (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C), (b)(6), (b)(7) on July 26, 2011:

Perhaps we should forget the whole thing. With no ongoing contract process between GMU and DTRA, I see no point in just pursuing one IPA. GMU will be at risk with the hire as it stands and the hiring process is a lot of work. Please confer with Alan to see if this is what he wants to do; or if he wishes to pursue a long term process to hire people via GMU.

Seven months later, DTRA awarded a \$2,914,141.00 research and development contract to GMU with an effective date of March 1, 2012. In an email, dated March 21, 2012, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), wrote to (b)(6), (b)(7)(C), regarding the use of the contract to funnel IPAs to CB:

Here is the process to bring an IPA thru the GMU contract.
 1) GMU suggestions, other source suggestions of potential candidates, submitted to Div Chiefs for selection. 2) Div Chief Nomination (include CV, justification, why the individual is a good fit), job position description, pay range, identification of IPA slot from approved list, completion of (b)(6), (b)(7)(C) IPA form.
 3) Dr. Rudolph's approval. 4) Candidate agreement (GMU faculty 3-6 mo, no guarantee of selection, IPA terms are 1 year but can be renewed (2-3 times). Potential requirement to return to GMU after 3 years. 5) Hiring by GMU until processed (3-6 mo). I have room on the contract now, and this is a first come first serve process, I can only work 2 at a time.

An IPA agreement between CB and GMU indicated GMU hired (b)(6), (b)(7)(C) was a (b)(6), (b)(7)(C) under the Tauri contract and was on the list of persons Tauri provided to (b)(6), (b)(7)(C) containing the names of individuals Dr. Rudolph allegedly directed Tauri to hire.

In an email dated May 30, 2012, (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) stated he was limited to having two individuals at a given time in the process to become GMU employees, then CB IPAs. (b)(6), (b)(7)(C) also wrote, "Present timeline follows: (b)(6), (b)(7)(C)

We found no evidence to indicate GMU and CB executed IPA agreements with these persons. (b)(6), (b)(7)(C) forwarded the email to Dr. Rudolph the same day.

In an email dated June 29, 2012, (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C) and expressed his concerns about the propriety and potential consequences of the arrangement with GMU:

Please note that we are "coloring outside of the lines" with the IPAs. These folks are being hired at our request, we are paying for their wash out period and pushing them thru Personnel – they are supposed to be GMU employees that are coming to DTRA to improve GMU's ability to work with the government. If J1 figures this out, it could cause significant problems for Dr. R[udolph]. So we can't really show our hand or push it too hard.

Lawrence Livermore National Laboratory (LLNL)

(b)(6), (b)(7)(C) testified Dr. Rudolph wanted (b)(6), (b)(7)(C), (b)(6), (b)(7)(C). She told us CB placed additional funds onto an existing contract with LLNL. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

In an email dated April 23, 2012, Dr. Rudolph wrote to (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C), "I want to talk to (b)(6), (b)(7)(C). Do you know who I should contact?" (b)(6), (b)(7)(C) replied, "I just shot a note out to the head of HR. I will let

⁷ LLNL is an FFRDC that performed on contracts for DTRA and other Government agencies.

⁸ (b)(6), (b)(7)(C) was on the list of persons Dr. Rudolph allegedly directed Tauri to hire. ATMI Incorporated supplies high performance materials to manufacturers in the life sciences industry. (b)(6), (b)(7)(C)

you know when I hear back.” At that time, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C).

In an email dated May 30, 2012, (b)(6), (b)(7)(C) wrote to Dr. Rudolph, “I queried AI about GMU as a possibility for (b)(6), (b)(7)(C) they are limited to paying no more than their professors so that is not a viable option. Still waiting on (b)(6), (b)(7) to respond. Do you have any other ideas?”

In an email dated June 1, 2012, (b)(6), (b)(7)(C) wrote to Dr. Rudolph to discuss (b)(6), (b)(7)(C) :

My problem is that (b)(6), (b)(7)(C) continues to occupy a critical position which I cannot backfill until he moves on. I need some assurance that DTRA is taking (b)(6), (b)(7)(C) transition seriously or I will have to initiate alternative remediation via NIH HR. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and there will not be yet another extension. I realize this message is harsh, but enough already.

In his email reply, Dr. Rudolph told (b)(6), (b)(7)(C), “We will transition (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) as agreed.”

In an email, dated June 1, 2012, Dr. Rudolph wrote to (b)(6), (b)(7)(C) regarding (b)(6), (b)(7)(C), and asked, “Any word from (b)(6), (b)(7)(C) In an email dated June 6, 2012, (b)(6), (b)(7)(C) responded to Dr. Rudolph, “Not yet, I checked this week and plan on checking before I leave. Do you know of any other avenues of contracts?” Dr. Rudolph then emailed (b)(6), (b)(7)(C), “LLNL.”

In an email dated June 2, 2012, (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C), and requested, “Can you direct me to the appropriate person at LLNL re: IPA discussion. We are seeking an IPA position for our (b)(6), (b)(7)(C)

In an email dated June 22, 2012, (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C), that the “DTRA CB IPA” salary would be (b)(6), (b)(7)(C)

In an email dated July 9, 2012, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) “The annual IPA cost will be (b)(6), (b)(7)(C) – this includes salary plus fringe benefits.” (b)(6), (b)(7)(C) forwarded the email to Dr. Rudolph and stated, (b)(6), (b)(7)(C) per annum to bring (b)(6), (b)(7)(C) on board, that’s a lot of moola. Are you up for that?” Dr. Rudolph replied, “DOE is expensive. I think we are more likely to be challenged on salary. I am not sure DTRA will be up for salaries higher than SES but I am ok.”

In an email dated July 24, 2012, (b)(6), (b)(7)(C) told Dr. Rudolph and (b)(6), (b)(7)(C)

We have a crossroad to consider and it bears some risk. LLNL wants (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) The imperatives of dates is to meet the upcoming NIH deadline. If DTRA disapproves the IPA package, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). Alan, this

may require SES intervention, (b)(6), (b)(7)(C) you need to be cognizant of risk.

In an email, dated July 26, 2012, (b)(6), (b)(7)(C) wrote to (b)(6), (b)(7)(C), "Please use the following project to add the funds for support of (b)(6), (b)(7)(C) for the first 100 days. The LLNL (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). We used the same account for (b)(6), (b)(7)(C)

In an email dated August 9, 2012, (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C), "Yes, we agree with (b)(6), (b)(7)(C) as the start date" for the IPA.

Discussion

We conclude Dr. Rudolph improperly acquired human resources for his directorate.

We found Dr. Rudolph wanted to recruit certain individuals he knew to work for him in CB and decided the quickest way to accomplish this was to direct prime contractor Tauri to award subcontracts to individuals he [Dr. Rudolph] selected. We found he did this up to 14 times, including for (b)(6), (b)(7)(C)

We also found Dr. Rudolph approved a plan for GMU and LLNL to hire individuals he selected expressly for the purpose of detailing them to CB as IPAs. The individuals were not GMU or LLNL employees when Dr. Rudolph identified them. Dr. Rudolph approved the use of CB R&D contracts as a vehicle for CB to pay GMU and LLNL for their salaries during their first 90 days of employment or "washout" period. We found no evidence GMU or LLNL would have hired the individuals absent the plan to detail them to CB as IPAs and absent the arrangement for CB to pay their salaries during their washout periods.

We further found Dr. Rudolph and CB executed this plan with GMU for (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). We found they executed the plan with LLNL for (b)(6), (b)(7)(C) and attempted to repeat the process for (b)(6), (b)(7)(C). Finally, we found (b)(6), (b)(7)(C)

FAR Part 37 states the Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. It further states obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. Merit System Principles require that recruitment should be from qualified individuals after fair and open competition which assures that all receive equal opportunity. The JER requires employees to act impartially and not give preferential treatment to any private organization or individual. It prohibits employees from using their public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Title 5 provides agency heads the authority to enter into agreements with academic institutions and FFRDCs, for the purpose of detailing or appointing career non-Federal employees to Federal positions. It also provides that, as part of such an agreement, the Federal agency may reimburse the non-Federal sponsoring organization for all, some, or none of the detailed employee's salary and benefits. Title 5 provides no authority for the Federal agency to reimburse the sponsoring organization for the pay and benefits of non-Federal employees outside the effective dates of the IPA agreement.

We determined that by directing Tauri to subcontract with individuals he selected, Dr. Rudolph violated the JER's provision against using his position to induce another person to provide a benefit to persons with whom he was affiliated in a nongovernmental capacity. This direction was also inconsistent with FAR Part 37, which states the Government's preference for obtaining personal services by direct hire rather than by contract.

We determined Dr. Rudolph's actions with respect to GMU and LLNL were also inconsistent with FAR Part 37. He manipulated the contracting process to pay GMU and LLNL during the initial "washout period" of the individuals he selected. In effect, Dr. Rudolph obtained personal services from (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

We further determined Dr. Rudolph's direction to GMU and LLNL to hire the individuals he selected violated the JER because they amounted to the use of his public office to induce other persons to provide a benefit to persons with whom Dr. Rudolph was affiliated in a nongovernmental capacity. As DTRA contractors, GMU and LLNL were especially susceptible to real or perceived pressure from Dr. Rudolph.

Finally, we determined Dr. Rudolph's actions with respect to GMU, LLNL, and the IPA program were inconsistent with the IPA authorities in Title 5. (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), and other individuals "in the pipeline," were not GMU and LLNL career employees recruited to become IPAs for the mutual benefit of the sponsor and provider. Dr. Rudolph induced GMU and LLNL, institutions which competed for CB contract funds, to hire the persons he wanted regardless of the human resources requirements of those institutions. His actions constituted a manipulation of the IPA authorities.

Response to Preliminary Report

In his response to our preliminary report, Dr. Rudolph disagreed with our determination that he improperly acquired human resources. Dr. Rudolph's primary arguments related to the qualifications of the persons he identified; his relationship with those persons, or lack thereof; the authority to hire contractor personnel; the fact that Tauri did not hire the entire list of 14 persons he identified; the purpose of the GMU and LLNL contracts; and the competitive process those institutions used to identify employees to perform on those contracts.

Individual Qualifications

Dr. Rudolph stated our report “ignores the extreme competence, quality and experience of those individuals mentioned in the report.” We do not dispute their qualifications. However, the statement is not relevant because Title 5, the JER, and the FAR do not provide for waivers or exceptions when an individual is well-qualified.

Relationships

Dr. Rudolph disputed our determination that he used his position to induce someone to provide a benefit to someone with whom he was affiliated in a nongovernmental capacity. He stated “most of the allegations regarding hiring relate to people Dr. Rudolph did not know before his tenure and some had already been employed by the agency.” He said he and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) He and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C).

We presented evidence regarding several persons Dr. Rudolph may or may not have known prior to joining DTRA. However, the one person we specifically identified in our finding was (b)(6), (b)(7)(C)

This affiliation in a nongovernmental capacity, coupled with Dr. Rudolph’s actions, served as the basis for our determination that Dr. Rudolph violated the JER.

Hiring Authority

Dr. Rudolph stated that “third party contractors had the ultimate authority on who they hire,” not him, and we do not dispute this statement. However, the statement is not relevant because coercion or inducement is the issue, not ultimate hiring authority. We determined Dr. Rudolph used his position in a manner intended to induce Tauri, GMU, and LLNL, who were susceptible to Dr. Rudolph’s influence because he was their customer, to hire the people he wanted.

Number of Persons Hired

Dr. Rudolph stated our report ignored “that all of the individuals that he is alleged to have recommended were not hired.” The statement is not relevant because we made no finding that Tauri, GMU, or LLNL hired all the people Dr. Rudolph recommended. We made findings or determinations specific to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C). Tauri did not hire all of the individuals that Dr. Rudolph wanted to hire because Tauri complained to the DTRA contracting officer, who halted the practice.

Purpose of the GMU and LLNL Contracts

Dr. Rudolph stated the GMU and LLNL “contracts were not set up for the purposes of hiring for the agency.” We do not dispute this statement and recognize DTRA awarded the contracts to achieve S&T outcomes. The statement is not relevant because the problem was not

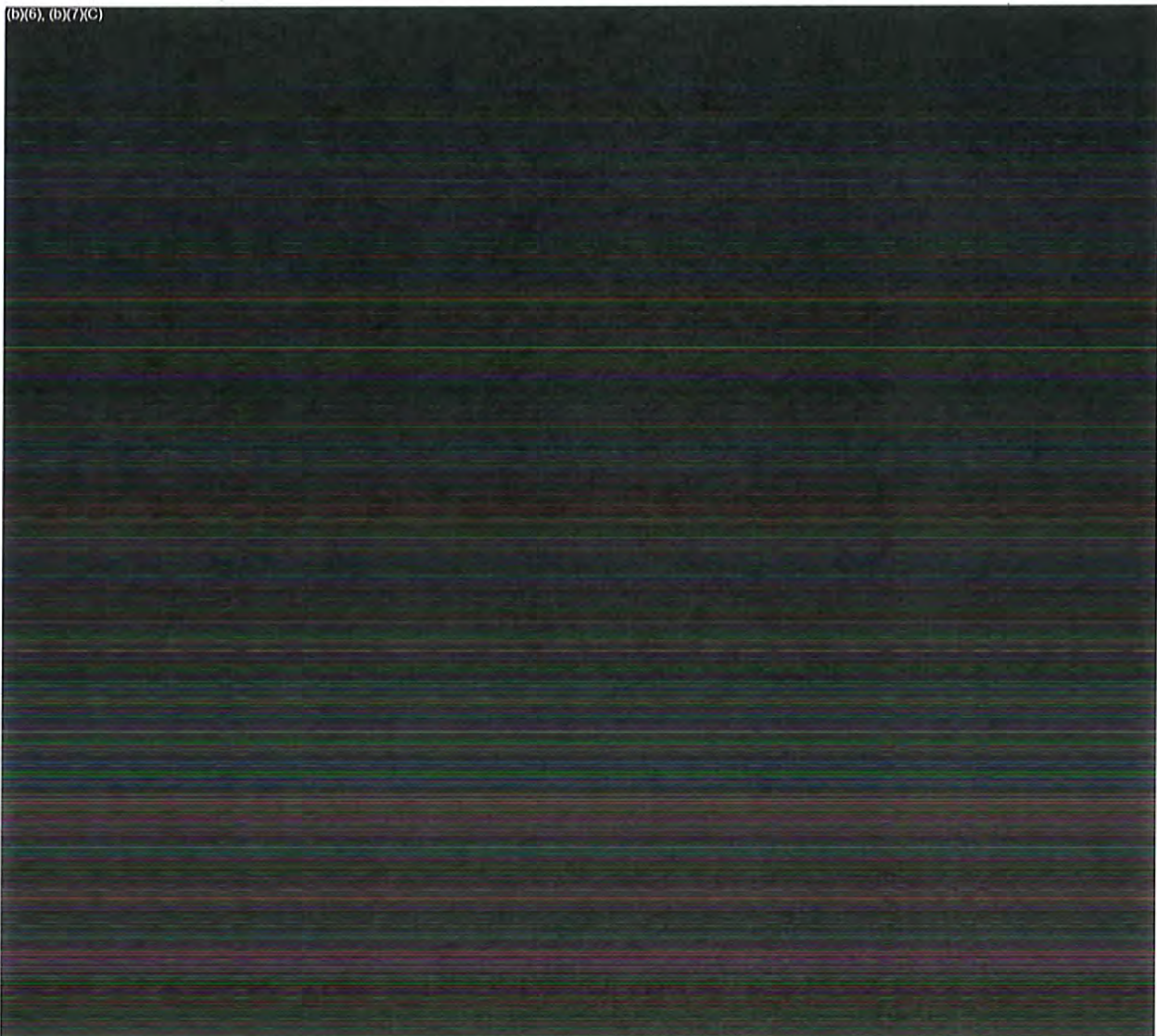
the original purpose of the contracts. It was how Dr. Rudolph used the contracts as vehicles to manipulate IPA authorities, in a manner inconsistent with FAR Part 37.

Competitive Process

Dr. Rudolph stated GMU used a competitive process to hire individuals to perform on the contract and that Dr. Rudolph did not direct GMU or LLNL to hire any individual. We acknowledge GMU may have used a competitive process to assemble part of the team that performed on its S&T contract with DTRA. However, the evidence made Dr. Rudolph's misuse of the GMU and LLNL contracts and IPA authorities clear with respect to (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C).

After considering all the evidence and Dr. Rudolph's response to our preliminary report, we stand by our conclusion that Dr. Rudolph improperly acquired human resources for his directorate.

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)

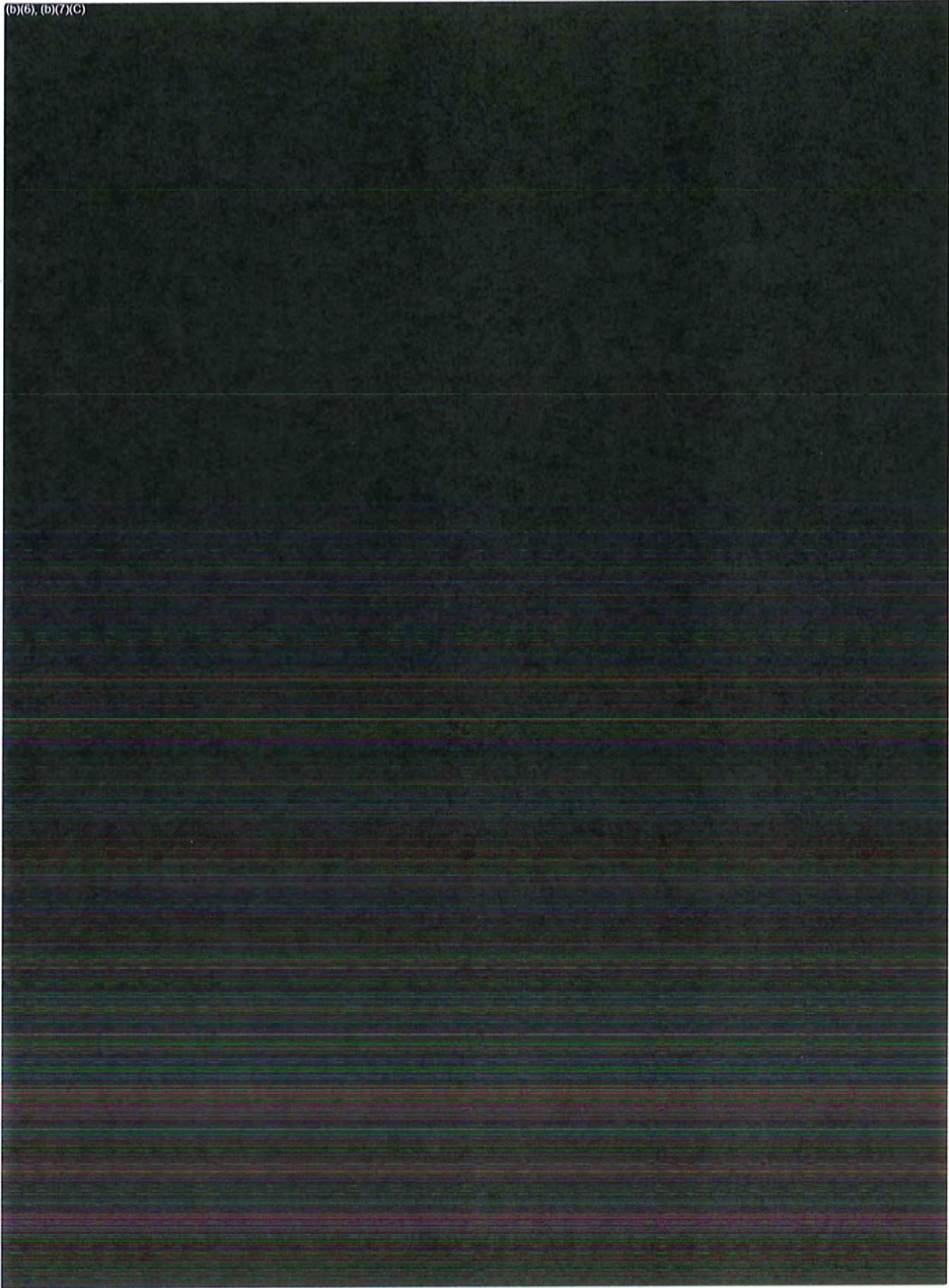


⁹ (b)(6), (b)(7)(C)

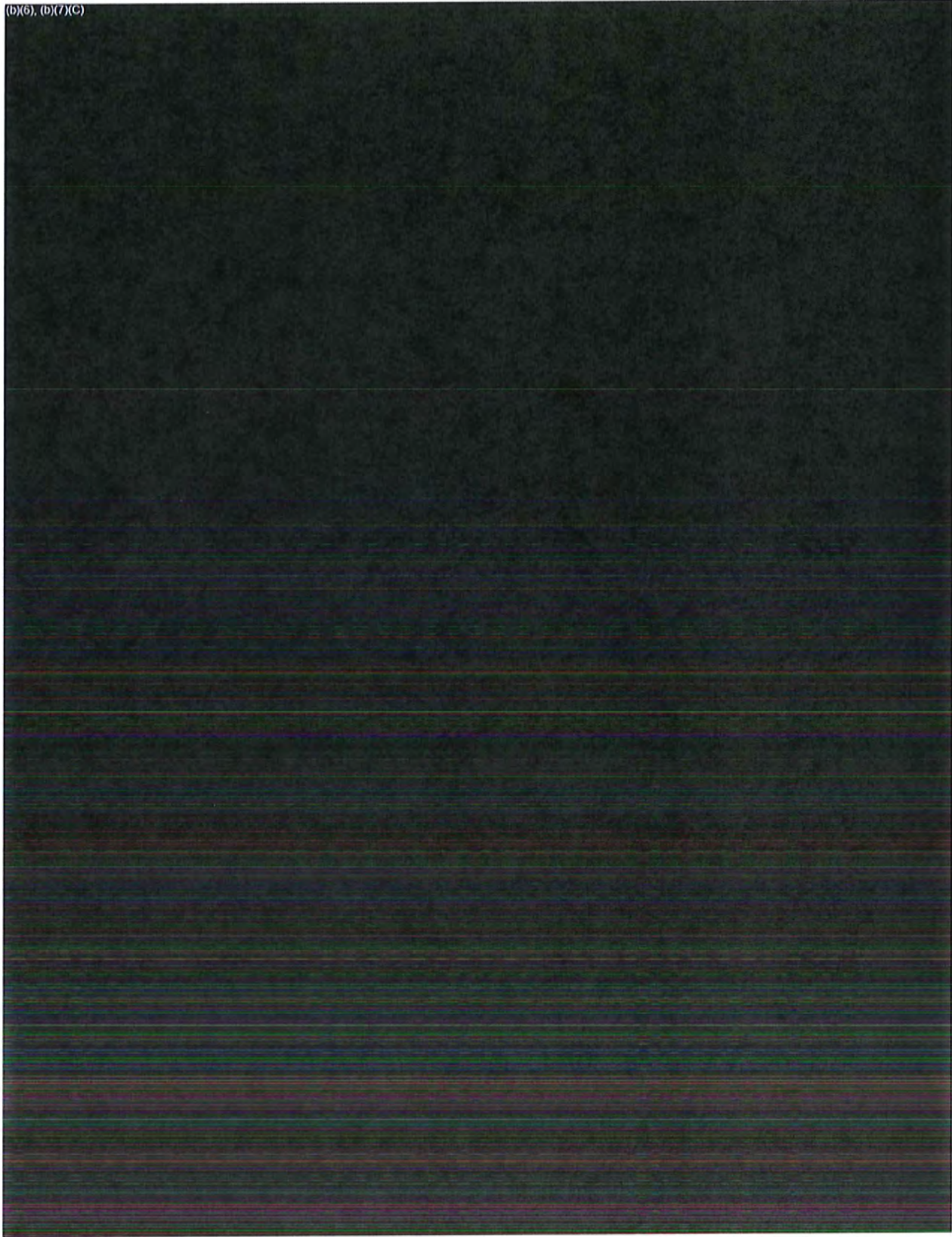
¹⁰ (b)(6), (b)(7)(C)

¹¹ (b)(6), (b)(7)(C)

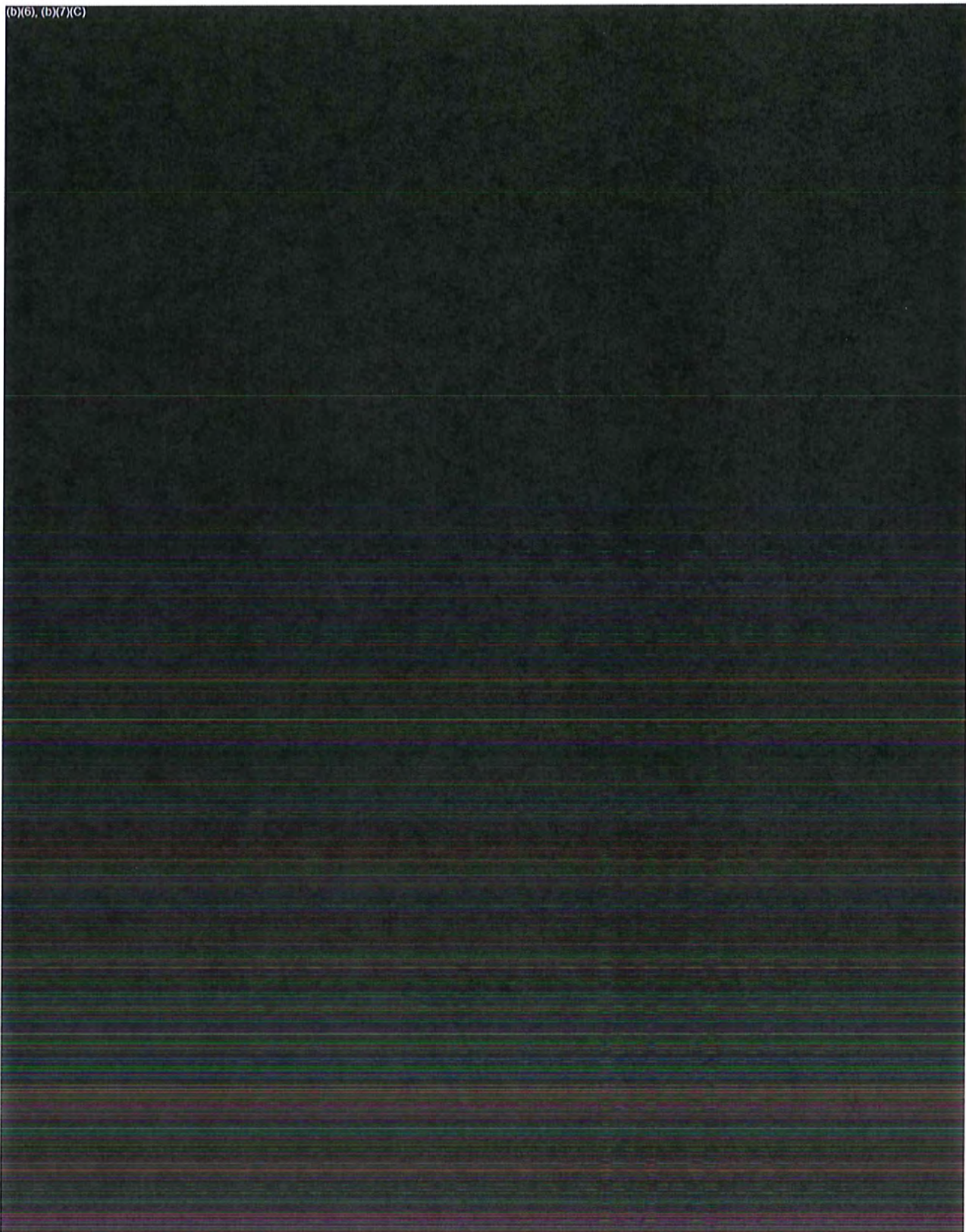
(b)(6), (b)(7)(C)



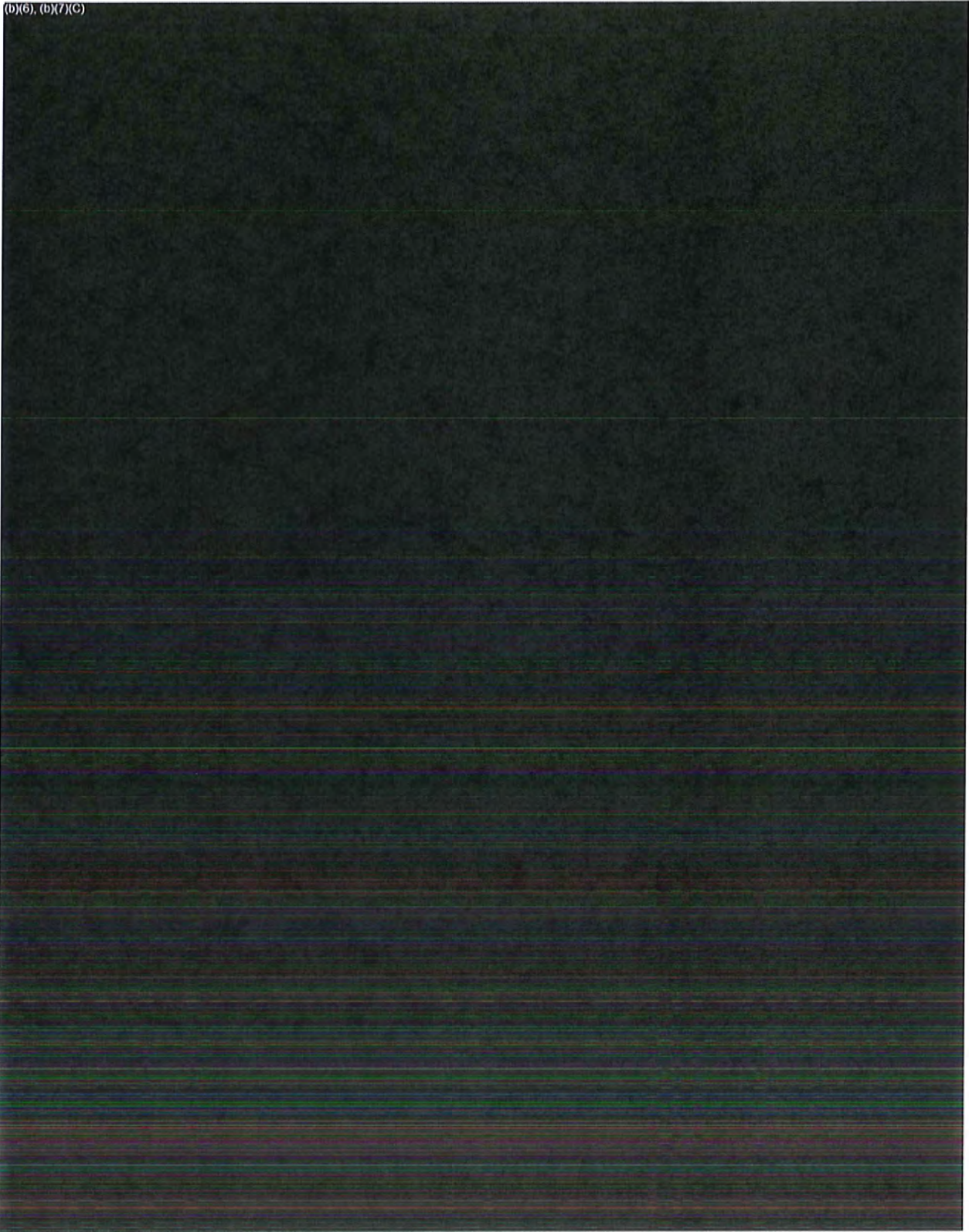
(b)(6), (b)(7)(C)




(b)(6), (b)(7)(C)



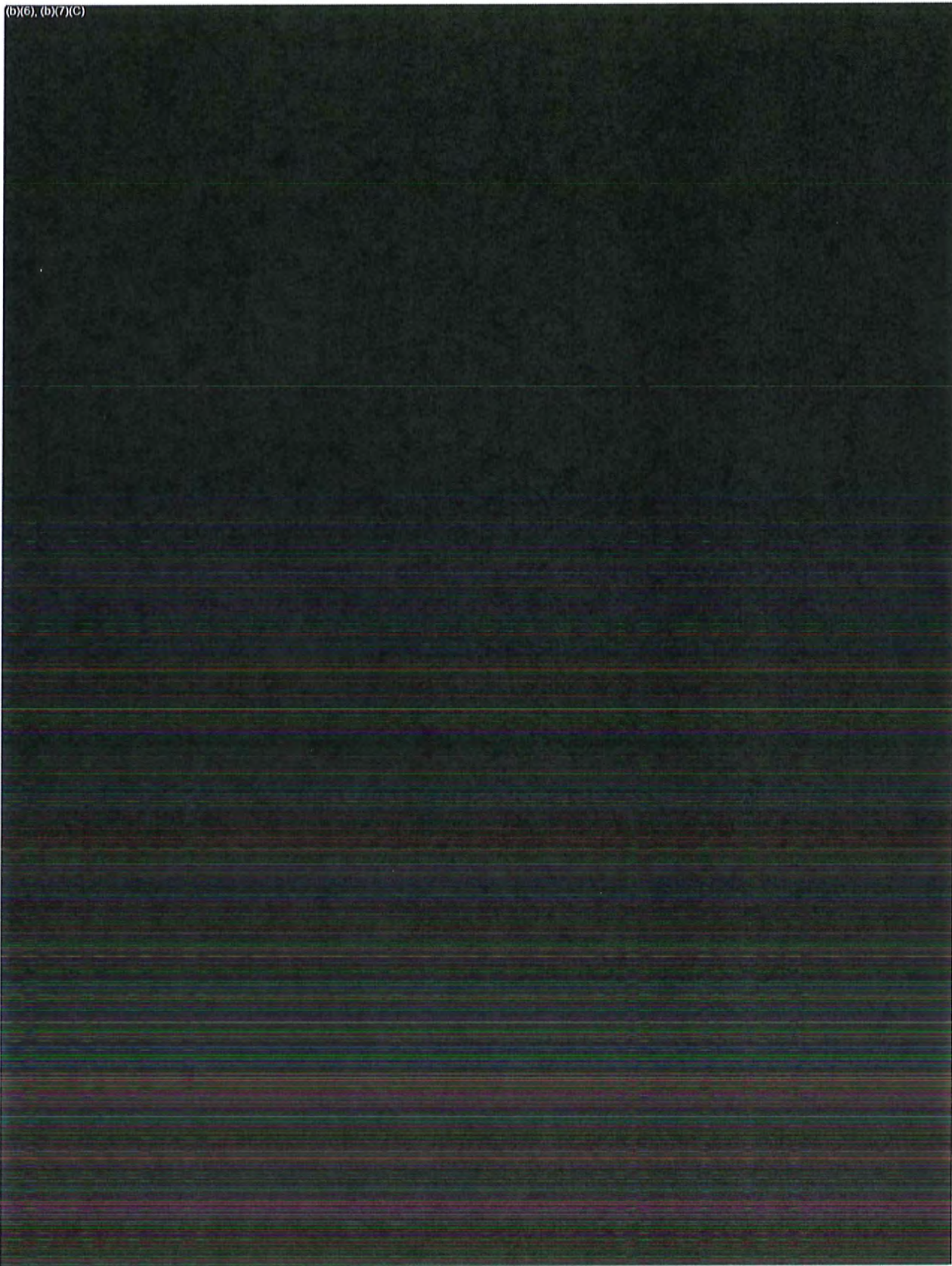
(b)(6), (b)(7)(C)




¹² (b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



C. Did Dr. Rudolph engage in misconduct related to official travel?

Standards

Joint Travel Regulations (JTR), Volume 2, "Department of Defense Civilian Personnel," dated June 1, 2009

Paragraph C1058, "Obligation to Exercise Prudence in Travel," requires that the traveler exercise the same care and regard for incurring Government travel expenses as a prudent person traveling at personal expense.

Paragraph C2000-A, "Travel Transportation Policy," requires travelers to use economy/coach-class transportation accommodations unless otherwise specifically authorized under the JTR. It further states that City-Pair airfares should be used for transportation where offered. Paragraph C2000-A.5, provides that a traveler is personally financially responsible for any additional expense accrued by not complying with paragraph C2000-A.

Paragraph C2001-A.2(a), states, that the use of City-Pair airfares is to the Government's advantage, and such airfares should be used for official air travel. Paragraph C2001A.2(b) provides that the use of non-contract air service may be authorized only when under specific, enumerated conditions and if specific authorization and justification is shown on the travel order.

Paragraph C4602, "Justification," states, an AEA [Actual Expense Allowance] may be authorized/approved for travel when the per diem rate is insufficient for part, or all, of a travel assignment because actual and necessary expenses (especially lodgings) exceed the maximum

per diem; for special duties; or when costs for certain items have escalated temporarily due to special or unforeseen events.

Paragraph C4604, "Authority/Approval" states, the authorizing official may authorize AEA up to 300 percent of the locality per diem rate (rounded to the next higher dollar). AEA may be authorized before travel begins or approved after travel is performed, with certain exceptions that require authorization in advance of travel.

Paragraph C4606, "Limitations," states, an AEA is prescribed only on an individual trip basis and only after consideration of the facts existing in each case. AEA must not be authorized as part of a 'blanket' travel authorization/order. A traveler is financially responsible for excess costs and any additional expenses incurred for personal preference/convenience.

Appendix O, "TDY Travel Allowances," JTR

Paragraph T4025(A)(1), Mandatory Policy, states, "It is DoD *mandatory policy* that travelers use available CTOs to arrange official travel, including transportation and rental cars."¹³

Paragraph T4050(B)(2), During the Trip, states, "The traveler must be able to produce receipts for lodging and individual official travel expenses of \$75 or more."

Appendix P, "City-Pair Program," JTR

The City-Pair Program requires DoD travelers on official business to use City-Pair contract carriers unless a specific exception applies.¹⁴ Part II, Paragraph B.2, prohibits a traveler from choosing not to use a contract carrier because of personal preference, frequent flyer clubs, and other reasons. It states that such action violates the City-Pair contract and Department policy and regulations.

DoD 7000.14-R, "DoD Financial Management Regulation (FMR)," Volume 9, August 2011

Section 020302 provides that the traveler is responsible for preparing initial authorizations, amendments, and post trip vouchers using DTS. Additionally, it provides that the traveler also is liable for any false or fraudulent written or oral statements under the False Claims Act (18 U.S.C. 287, 18 U.S.C. 1001, and 31 U.S.C. 3729).

Paragraph 030101 states that it is DoD policy that the Government Travel Charge Card (GTCC) shall be used by all DoD personnel to pay for all costs related to official Government travel unless specifically exempted.¹⁵ Official Government travel is defined as travel under

¹³ Emphasis in the original.

¹⁴ The Joint Travel Regulations provide that regulations applicable to the contract City-Pair Airfare Program are found in Defense Transportation Regulation 4500.9-R (DTR), Part I, Chapter 103, paragraphs A2 and B2. Appendix P is an edited extract from the regulation.

¹⁵ The requirement to use the GTCC for all costs of official Government travel was established by Congress in the Travel and Transportation Reform Act of 1998 (Public Law 105-264).

competent orders while performing duties pertaining to official Government assignments such as TDY.

Paragraph 030103 provides that commanders and supervisors at all levels shall ensure compliance with the regulation.

Paragraph 030501 states that unless otherwise exempt, all DoD personnel are required to use the GTCC for all authorized expenses relating to travel.

Memorandum, dated March 28, 2008, Subject: Mandatory Use of the Defense Travel System (DTS)

The Under Secretary of Defense, Personnel and Readiness, mandated the use of DTS as the single, online travel system used by DoD for all travel functions supported by the system and those that will be supported by DTS in the future as they become available.

Facts

The complaint alleged that Dr. Rudolph failed to use Government contract air carriers to travel on TDY and that he refused to obtain a Government Travel Charge Card (GTCC) as required.

(b)(6), (b)(7)(C) [REDACTED], testified that she had several discussions with Dr. Rudolph concerning his travel and explained to him that he was required to use "City-Pair" Government-contracted air carriers. She told us Dr. Rudolph was "argumentative" because he wanted to fly in business class, he disregarded the City-Pair program when he thought contracted flights "didn't fit his schedule," he routinely avoided using DTS and he booked flights himself instead.

We obtained Dr. Rudolph's DTS records for 21 trips he took between September 2010 and September 2012. They indicated he did not use a GTCC as required 14 times: 10 times he charged travel expenses to a Centrally Billed Account (CBA) and on 4 trips he used his own credit card. The records also indicated Dr. Rudolph purchased his own airline tickets 7 times without using a Contract Travel Office (CTO) or DTS. Dr. Rudolph did not use Government contract air carrier fares 7 times, and the travel records did not include any justifications for this.

After the October 13, 2010, trip to College Station, Texas, Dr. Rudolph claimed reimbursement for a fee he paid to change his flight. Finally, Dr. Rudolph exceeded authorized rates for TDY lodging without an approved AEA 3 times. Table 1 lists the trips, by date, and the associated issues we found.

| Destination and Departure Date | Transportation Ticket Charged to CBA | Transportation Ticket Charged to GTCC | Self-Procured Transportation Ticket (No CTO or DTS) | Exceeded Lodging Rate Without AEA | Remarks Other issue |
|--------------------------------|--------------------------------------|---------------------------------------|---|-----------------------------------|-------------------------------|
| | | | | | AEA) |
| Bangkok, THA 06/12/2012 | No | Yes | Yes | No | |
| Boston, MA 06/19/2012 | Unknown | Unknown | Unknown | No | Only Lodging expenses claimed |
| Phoenix, AZ 08/14/2012 | No | Yes | No | No | No issues |
| Total Trips = 21 | Yes = 10 | No = 14 | Yes = 7 | Yes = 3 | Used personal credit card = 4 |

Discussion

We conclude Dr. Rudolph engaged in misconduct related to official travel.

We found Dr. Rudolph personally procured air or rail tickets 7 times without using DTS or a CTO. We determined this practice violated JTR, FMR, and Under Secretary for Personnel and Readiness mandates to use DTS and procure tickets through a CTO.

We also found Dr. Rudolph did not use Government City-Pair contract air carrier fares each of the 7 times he self-procured tickets. We determined this practice violated a JTR mandate to use the City Pair program contracted air carriers. On one occasion Dr. Rudolph claimed \$178.00 for an airline reservation change. We note that he was not entitled to reimbursement for the fee because he purchased the ticket himself and did not use the City-Pair carrier.

We further found Dr. Rudolph did not obtain a GTCC until approximately March 2012. Before March 2012, Dr. Rudolph charged transportation ticket expenses to a centrally billed account 10 times and to his own credit card 4 times. We determined this practice violated the FMR's mandate to charge all authorized expenses relating to travel to a GTCC.

Finally, we found Dr. Rudolph incurred lodging expenses that exceeded authorized rates on three occasions, but he did not provide supporting AEA documentation. We determined this practice violated the JTR requirement to justify such expenses and obtain approval for them.

Response to preliminary report

In his response to our preliminary report, Dr. Rudolph disagreed with our conclusion that he engaged in misconduct related to official travel and requested we interview additional

witnesses. He emphasized that he has not been paid for several trips and blamed problems with preparing and processing his vouchers on staff member "incompetency" and a change in accounting systems. We note the FMR holds the traveler accountable for the accuracy and timeliness of travel vouchers even when staff members enter them into DTS.


Dr. Rudolph did not comment on our finding and determination regarding his practice of purchasing his own air or rail tickets without using DTS or a CTO. Regarding his failure to use contract air carriers when he bought his own tickets, he offered that his practice once resulted in a lower air fare.

Dr. Rudolph claimed he obtained a GTCC after he "understood that it was required" and "had time to complete the training program."

Dr. Rudolph believed we based our determination regarding AEAs on a failure to obtain an AEA in advance of travel. He argued that prior to commencing travel, Dr. Rudolph could not know when he needed an AEA, and that he could obtain one after the completion of travel. We agree a traveler may obtain an AEA after the completion of travel when unforeseen circumstances necessitate incurring expenses that exceed per diem. We disagree with the assertion that a traveler can never know prior to travel that he needs an AEA. Regardless, we found 3 instances for which Dr. Rudolph failed to obtain an AEA either before or after travel.

We interviewed three additional witnesses Dr. Rudolph suggested, and none provided evidence that contradicted our findings and determinations in these matters.

(b)(6), (b)(7)(C)



After considering all the evidence and Dr. Rudolph's response, we stand by our conclusion that Dr. Rudolph engaged in misconduct related to official travel.

V. CONCLUSIONS

- A. Dr. Rudolph improperly acquired human resources for his directorate.
- B. (b)(6), (b)(7)(C)
- C. Dr. Rudolph engaged in misconduct related to official travel.

Table 1. Issues identified in Dr. Rudolph's travel records.

| Destination and Departure Date | Transportation Ticket Charged to CBA | Transportation Ticket Charged to GTCC | Self-Procured Transportation Ticket (No CTO or DTS) | Exceeded Lodging Rate Without AEA | Remarks Other issue |
|-----------------------------------|--------------------------------------|---------------------------------------|---|-----------------------------------|----------------------------|
| Seattle, WA 09/20/2010 | Yes | No | No | No | |
| Ottawa, CAN 10/03/2010 | Yes | No | No | No | |
| College Station, TX 10/13/2010 | No | No | Yes | No | Change fee \$178.00 |
| Orlando, FL 11/14/2010 | No | No | Yes | No | |
| Philadelphia, PA 12/03/2010 | Yes | No | No | No | Train |
| New York, NY 12/10/2010 | Yes | No | No | No | |
| Seattle, WA 01/09/2011 | Yes | No | No | No | |
| Atlanta, GA 01/19/2011 | Yes | No | No | No | |
| Lima, PER 02/08/2011 | Yes | No | No | No | |
| New Delhi, IND 04/12/2011 | Yes | No | No | No | |
| New York, NY 06/08/2011 | Yes | No | No | Yes | Overpaid \$135.00 (no AEA) |
| San Diego, CA 06/22/2011 | Yes | No | No | Yes | Overpaid \$20.00 (no AEA) |
| Sydney, AUS 09/30/2011 | No | No | Yes | No | |
| Melbourne, AUS 10/07/2011 | No | No | Yes | No | |
| Boston, MA 03/12/2012 | No | Yes | No | No | No issues |
| Bangkok, THA 03/13/2013 | No | Yes | Yes | No | |
| Atlanta, GA 04/24/2012 | No | Yes | No | No | No issues |
| Seoul, KOR 05/12/2012 | No | Yes | Yes | Yes | Overpaid \$184.50 (no |

VI. RECOMMENDATIONS

We recommend the Director, DTRA:

- Determine the amount, if any, the Government is obliged to pay to Dr. Rudolph for unreimbursed travel expenses;
- Take action to ensure DTRA officials appropriately exercise authorities to enter into and execute IPA Mobility Program agreements; and
- Take action to ensure DTRA senior officials conducting official travel possess and use a GTCC as required.

We also recommend the Director, OPM, place our conclusions in Dr. Rudolph's permanent personnel record.

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Report No. 20121204-001067



Inspector General
Department of Defense

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