

**CITY OF NEW YORK
DEPARTMENT OF INVESTIGATION
OFFICE OF THE INSPECTOR GENERAL**

To: File
From: Stephen Dumas, Special Investigator
CMS: 16-06750

Date: January 24, 2018
Case:

CLOSING MEMORANDUM

The following is a summary only of information pertaining to this investigation and may not contain each and every fact learned during the course of the investigation.

ORIGIN OF CASE AND NATURE OF ALLEGATION:

Since July 7, 2016, the Office of the Inspector General ("OIG") for the New York City Department of Correction ("DOC") has been investigating multiple allegations associated with the 1.1 million U.S. dollar contract DOC has with United States Corrections Special Operations Group ("US C-SOG") including: [REDACTED]

[REDACTED] that US C-SOG instructor, Garcia is alleged to not have the proper credentials to have firearms in the State and/or City of New York; and that the US C-SOG contract was not properly submitted through DOC's procurement process for the issuance of the contract.

Over the course of several months, DOI interviewed DOC employees with direct knowledge of the procurement process for the US C-SOG contract, spoke with The Mayor's Office of Contract Services ("MOCS"), obtained subscription contracts from DOC and MOCS to compare with US C-SOG's contract, interviewed US C-SOG founder/instructor Garcia, spoke with several agencies and companies to verify Garcia's credentials, [REDACTED]

[REDACTED] A summary of DOI's findings and specific recommendations for improvement are described below. DOI's investigation was a specific assessment of the below allegations. DOI's investigation did not include any assessment of Garcia and the US C-SOG training performance under the contract, or assessment of the curriculum in which he taught to DOC ESU staff.

Background

In the fall of 2015, former Commissioner Joseph Ponte requested Assistant Deputy Warden ("ADW") Julio Colon, shield # 1307, to attend a training demonstration conducted by Garcia in Spartanburg, South Carolina and Charlotte, North Carolina to get a better understanding of Garcia's tactics and whether the trainings would be useful for ESU staff. After returning from the training demonstrations, ADW Colon submitted a "request for training" of ESU staff by US C-SOG on August 26, 2015. On March 29, 2016 DOC reached an agreement with US C-SOG to administer Use of Force training to DOC ESU. The term of the contract was for three phases of training split over a three year period, each consisting of a ten week training program. The contract agreement was scheduled to begin in April 2016, and end in March 2018. The total contract amount was for \$1.1 million dollars. DOC officially began training with US C-SOG on May 16, 2016, for 10 consecutive weeks.

I.

[REDACTED]

[REDACTED]

Based on the above, DOI determined this allegation to be unsubstantiated.

II.

[REDACTED]

[REDACTED]

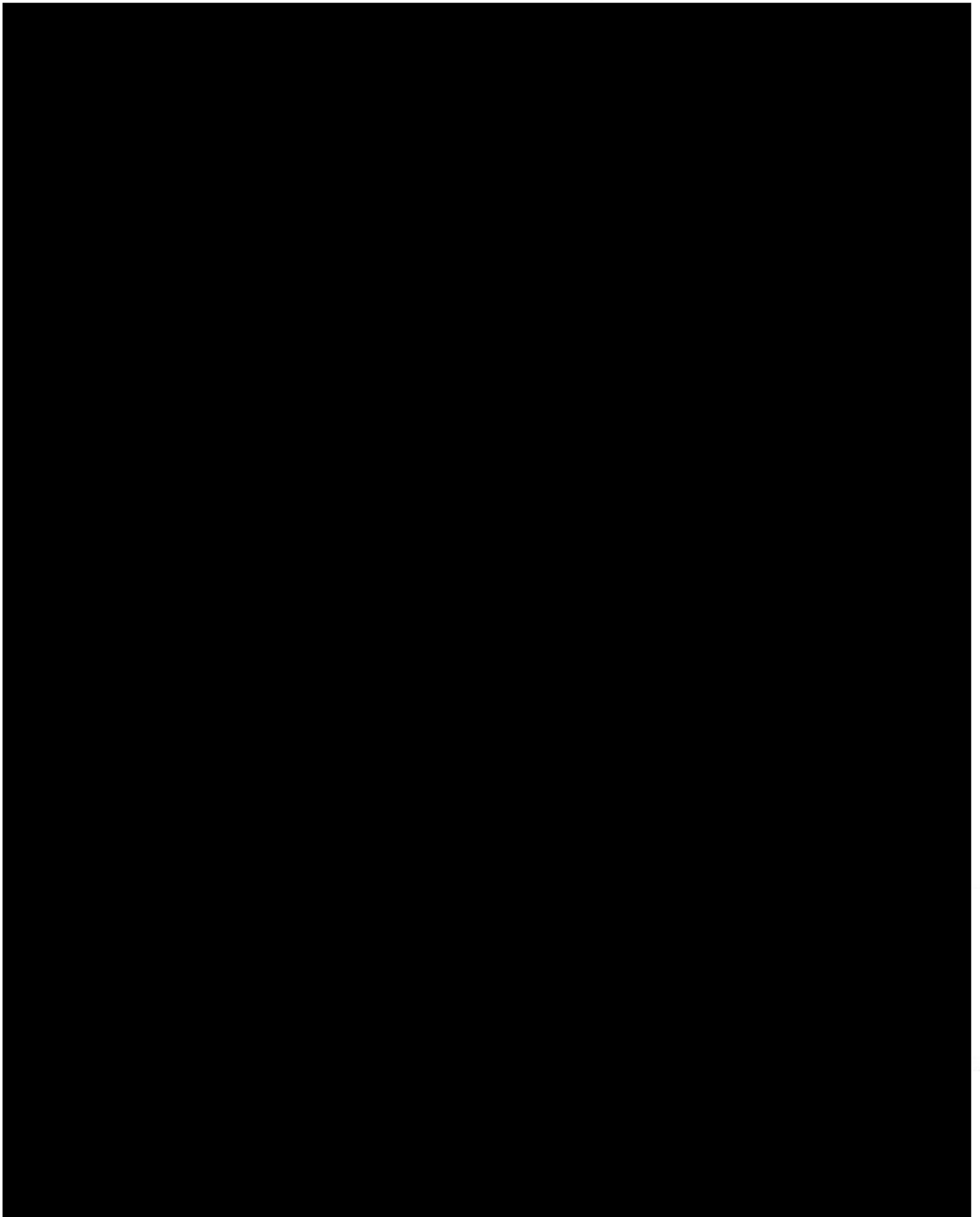
Based on the above, DOI determined this allegation to be unsubstantiated.

III.

[REDACTED]

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[REDACTED]

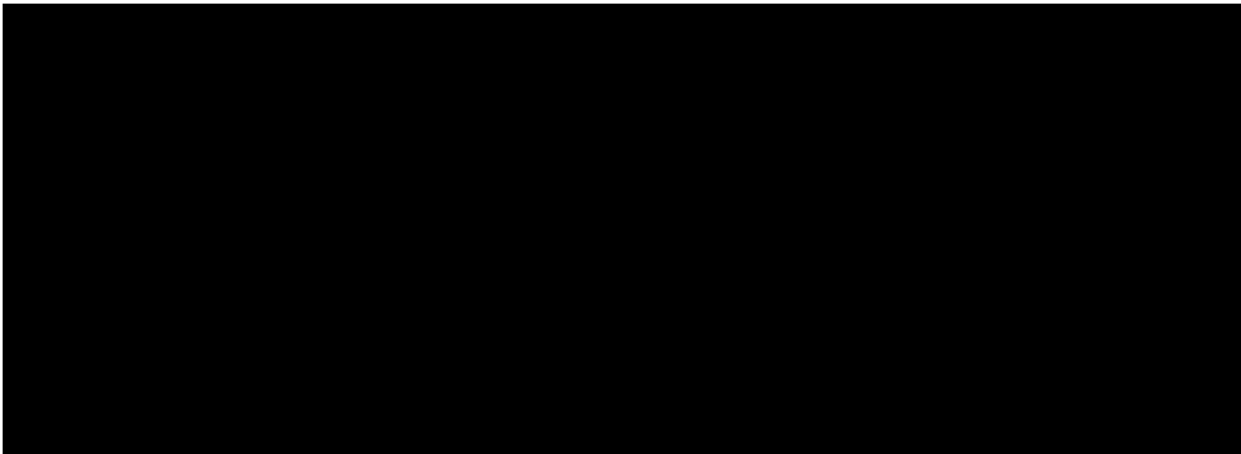


[REDACTED] Based on the above, DOI determined this allegation to be unsubstantiated.

IV. DOI investigated Garcia's background information and credentials.

During Garcia's September 6, 2016 interview, he provided a folder of documents pertaining to his background, credentials, and previous contracts US C-SOG had with other correctional facilities. [REDACTED]

[REDACTED]



At no point did DOC review Garcia's credentials before awarding the contract. Because Garcia provided the above documents and made the above representations after commencing the contract with the DOC, DOI draws no conclusion as to whether Garcia actually misrepresented his qualifications to DOC. However we include these findings for your information and consideration of how background verification in connection with DOC contracts can be improved moving forward.

V. DOI investigated allegations that the \$1.1 Million U.S. dollar contract DOC has with US C-SOG was not properly submitted through City procurement processes.

DOI investigators interviewed DOC [REDACTED] who dealt directly with the issuance of the contract. Additionally DOI investigators interviewed [REDACTED] and DOC [REDACTED] pertaining to information of the US C-SOG contract with DOC. DOI's investigation revealed that the US C-SOG contract was submitted as a "subscription" contract but wasn't properly submitted with a VENDEX check. [REDACTED] and [REDACTED] both stated that they believed that the contract did not require a VENDEX submission since it "wouldn't go through the normal bid processing". Both [REDACTED] and [REDACTED] stated that they did not have much experience with subscription contracts and reached out to MOCS for assistance in submitting it. [REDACTED] stated that it was standard practice for her office to only run a LexisNexis check and Google Web Search of the company and parties involved. [REDACTED] stated that any resume, previous work examples, background checks or necessary permits/ licenses required to obtain the contract would fall on the responsibility of the "end user" to obtain for issuance.² In this instance, [REDACTED] and ESU were the designated "end users" and as such, [REDACTED] believes responsibility to conduct further background checks fell to them. [REDACTED] was unaware of any procurement process done by ESU, [REDACTED] or the DOC Security Team and stated that "there may be documents that [REDACTED] has that I don't."

[REDACTED] stated to investigators that he had no part in the procurement process for the contract and that any documents he received were due to requests by [REDACTED] The New York City Department of Citywide Administrative Services ("DCAS") or MOCS. [REDACTED] stated he was unaware of the standard procurement requirements because that's what [REDACTED] and her department dealt with. At no time did [REDACTED] request Garcia's resume or credentials, previous US C-SOG

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contracts or additional background information. [REDACTED] assumed that all procurement requirements were met when ESU received the contract.

[REDACTED] stated that she did "find it odd" that the subscription method was being used for the contract but knew that using it would result in a quicker turnaround than the standard bidding process. [REDACTED] stated that her department was in contact with MOCS, The New York City Law Department, and The New York City Comptroller's Office and none of them pushed back or questioned use of the subscription method. Despite finding the submission of the contract odd [REDACTED] stated that she didn't ask any questions because she was "just doing her job" and "doesn't feel it appropriate to question the method chosen by supervisors" since she was new to DOC. As for the process of submitting the contract as a subscription, at no point did [REDACTED] think they did anything unusual and it was submitted properly. [REDACTED] did state that she felt a VENDEX should be run for the contract and when she asked [REDACTED] about it he "shrugged it off" so she continued with the contract. No additional alerts or red flags came to [REDACTED]'s attention during her review of the contract.

DOI contacted [REDACTED], [REDACTED], and [REDACTED] from MOCS via telephone on August 26, 2016 to discuss the DOC US C-SOG contract. Discussed on the call were the New York City Procurement Policy Board ("PPB") Rules, specifically Section 1-02 Applicability of PPB Rules subsection (f) (5). Subsection (f) (5) details that "subscriptions, including electronic subscriptions, for magazines and periodicals, orders for books and "off-the-shelf" training videotapes, and attendance at standard commercially-available training seminars" are not subject to the PPB Rules. MOCS had agreed with [REDACTED] and DOC that the US C-SOG contract had met the requirement to file the contract as a subscription. Upon DOI's request, MOCS agreed to look further into the US C-SOG contract, and report back any errors with the contract submission. MOCS informed DOI that despite meeting the requirement for filing the contract as a subscription, DOC failed to file a VENDEX Questionnaire at the time of the contract submission for US C-SOG or Garcia which is a requirement detailed in the NYC PPB Rules Section 2-08 Vendor Responsibility and Appeal of Determination of Non-Responsibility, subsection (e) VENDEX Questionnaire (1) (i)³.

Upon request DOC and MOCS provided previous contract examples that had used the subscription method. Review of the eighteen (18) DOC documents revealed that none of the contracts were valued over \$75,000 and all contracts were for either electronic record access, computer software, telecom services, magazine/book publications. MOCS provided six (6) contracts using the subscription method with values ranging from \$49,000 to \$25,000,000. The two contracts valued over \$1,000,000 were for LexisNexis software access and a flight training simulator. None of the contracts reviewed were for hands on training such as US C-SOG which trained ESU in Less Lethal Tactics.

³ **VENDEX Questionnaire: Definitions.** For purposes of this section only, the following definitions apply; Contract. Any agreement between an agency, elected official, or the Council and a contractor, or any agreement between such a contractor and a subcontractor which: (i) is for the provision of goods, services, or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at \$100,000 or more

Based on the above, DOI determined that DOC did not follow all relevant City procurement rules for the US C-SOG contract.

Recommendations and Conclusion

While DOI did not substantiate any of the allegations regarding [REDACTED], DOI's investigation did uncover a breakdown in general contract procurement processes and procedures. As described above the interviews showed that the DOC Procurement Department does not know the basic necessities of contract procurements and requirements of VENDEX questionnaire submissions. While applicable City procurement rules for this contract would not require background of Garcia's credentials and certifications, we note this as a vulnerability given Garcia's involvement in law enforcement training where firearms may be used. The US C-SOG contract was submitted and approved without sufficient background checks on instructor qualifications and certifications. As a result of the findings discussed here, DOI is making the following recommendations:

1. Re-training of all DOC Procurement Department staff including supervisors

During interviews, DOC staff displayed a lack of general knowledge of all requirements for submission of subscription contracts. DOI recommends DOC administer re-training on NYC PPB Rules, contract procurement standards and requirements for all DOC Procurement Department staff, including supervisors.

2. Audit of all DOC contracts submitted to ensure VENDEX questionnaires were included

The DOC Procurement Department was unaware that a VENDEX questionnaire was required for contracts submitted using the subscription method. As described above, DOC staff firmly believed that a VENDEX questionnaire was not necessary. During the interviews DOI was informed that all DOC contract procurements use an "Automatic Procurement Tracker". It was unclear to DOI investigators whether the current tracker had involved a proper check for submission of VENDEX questionnaires. In response, DOI recommends DOC conduct its own internal audit of contracts submitted to ensure that all proper steps were taken before submitting a contract for approval. It is in the best interest of DOC that a proper system be put in place that would pick up any and all missed VENDEX questionnaires.

3. Enhanced background checks on contractors working at prison facilities

As described above, the US C-SOG contract was not properly vetted as is required with any city contract. DOI's investigations revealed that procurement staff believed that the responsibility of backgrounding of contractor qualifications and certifications fell on the end user. DOC should revise its current background check policies of contractors because currently they only consist of a LexisNexis search and Google Web search. It is arguably good practice to employ a deeper and more sophisticated background check for all future contracts. This should include fingerprinting and a criminal records check.

Please notify this office of DOC's response to the above recommendations within thirty (30) days.

Submitted by:

Stephen Dumas
Stephen Dumas
Special Investigator

1/25/18
Date:

Approved by:

Dana A. Roth
Dana A. Roth
Inspector General

1/25/18
Date: