United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report

Case Number
0506-0026

Case Title:
Ferguson Enterprises Inc.

Reporting Office:
Detroit, MI, Resident Office

Subject of Report:
Interview of (b)(6), (b) (7)(C)

Activity Date:
September 23, 2010

Reporting Official and Date:
(b)(6), (b) (7)(C) RAC
26-SEP-2010, Signed by: (b)(6), (b) (7) *RAC*

Approving Official and Date:
(b)(6), (b) (7)(C) SAC
28-SEP-2010, Approved by: (b)(6), (b) *SAC*

SYNOPSIS

09/23/2010 - U.S. EPA CID Special Agent (SA) (b)(6), (b) (7)(C) interviewed (b) Detroit Water & Sewerage Department (DWSD) regarding the execution of several contracts.

DETAILS

On September 23, 2010, U.S. EPA CID Special Agent (SA) (b)(6), (b) (7)(C) interviewed (b) Detroit Water & Sewerage Department (DWSD) regarding the execution of several contracts. Also present during the interview was (b)(6), (b), Deputy Corporation Counsel, Detroit Law Department. Assistant U.S. Attorney Mark Chutkow was present for a portion of the interview. (b)(6), (b) (7)(C) was previously interviewed by FBI SA (b)(6), (b) (7)(C) in this investigation. (b)(6), (b) (7)(C) provided the following information:

(b)(6), (b) (7)(C) was the engineer over the execution of DWS 844A although (b) had no role in the evaluation and awarding of the contract. (b)(6), (b) (7)(C) recalled that DFT wrote a letter to (b) (b)(6), asking for an extension of time on the contract. (b)(6), (b) (7)(C) was copied on this letter and this is how (b) learned that DFT was asking for the extension. The letter was addressed to (b)(6), as (b) was the contracting officer for the contract. The extension was for one year and the justification given was that DFT incurred problems with the functionality of the system due to another contractor's delay in installing fiber optic lines which were needed for the functionality of the security system. (b)(6), (b) (7)(C) thought that this contractor was SBC but was not sure. The contract called for the installation of security systems at 72 booster stations and other facilities, and required a 30 day test period to be conducted to ensure that the system was fully functioning before the contract could be closed. The system had several operational problems such as the sensitivity of the system which results in false alarms such as when leaves blew against a fence and caused the alarm to go off.

The request for an extension of the contract was made by (b)(6), (b) (7) of DCI. This request resulted in an "Authorization to Proceed" known as an ATP to be approved by (b)(6), (b) (7)(C). Once an ATP is approved the engineer, in this case (b)(6), (b) (7)(C) drafts the language for the change order. The change order was sent to (b)(6), (b) (7)(C) for approval, then to (b)(6), and then the Water Board of Commissioners. (b)(6), (b) is not involved in the approval of the change order but (b)(6), (b) (7)(C) pointed out that the change order would not be instigated if not for (b)(6), (b) approval of the ATP. In this instance a change order was issued instead of a change authorization since the extension of the contract term was a change to the actual terms of the contract.

(b)(6), (b) (7)(C) was initially upset by the request for an extension of time as the contract specifically

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dictated the timeframe of the contract. (b)(6), and (b)(6), (b) told (b)(6), (b) (7)(C) that they needed to approve the extension. (b)(6), (b) (7)(C) was also upset as (b knew that Motor City Electric had lost the contract at least in part due to their contention that the timeline set in the contract was reliant on a third party installing the fiber optic lines and thus was arbitrary. (b)(6), (b) (7)(C) felt it was unfair to grant the extension to DFT. The DWSD project team may also have opinions or insight on this topic. The team consisted of (b)(6), (b) (7)(C), and (b)(6), (b) (7)(C) has retired from the DWSD.

The extension of the contract was authorized by Change Order No. 1 which was signed by (b)(6), Given the change order and the extension of time the DWSD was unable to seek liquidated damages from DFT for the failure to meet the contract deadline.

(b)(6), (b) (7)(C) was not aware of Weiss Construction being paid to come back and finish or repair work on the security system. (b)(6), (b) (7)(C) explained that a change authorization should exist which documents the payment to (b)(6), for the work and would be under the contract which (b held, not 844A.

A second change order was issued under 844A which was to return a $720,000 credit to the DWSD for monies left in the contract. The DWSD security group runs the security system and thus would be the entity which would hire contractors to work on the system now.

(b)(6), (b) (7)(C) was not involved in the Downtown water main pilot project although (b was aware of it. (b)(6), (b) was an inspector from (b) group who worked on the project. (b) never told (b)(6), (b) (7)(C) that (b was ordered by (b)(6), (b) to throw Hayes Excavating off the project. (b) (b)(6), was the DWSD project engineer for the pilot project.

(b)(6), (b) (7)(C) did supervise the execution of CM 2014 and CM 2015. (b)(6), (b) (7)(C) was the project engineer for the contracts and reported to (b)(6), (b) (7)(C) attended the kick off meetings for the contracts and recalled that the sub contractors involved included Imperial, McCormick, D'Agostini, (b)(6), (b) and EnT Trucking. (b)(6), (b) like a lot of the contractors, was good at laying pipe but was always behind in completing the restoration. (b)(6), (b) was worse than the other contractors in this aspect. The DWSD staff routinely had to go to the construction manager to address these problems. (b)(6), (b) (7)(C) recalled that (b)(6), (b) (7) came to (b) and asked what to do about (b)(6), (b) failure to perform the required restoration. (b)(6), (b) (7)(C) told (b)(6), not to assign (b)(6), (b) any more pipe to lay until the restoration was caught up. (b)(6), (b) (7)(C) was aware that (b)(6), (b) had a relationship with (b)(6), (b) (7)(C) at the time but did not let this affect how (b treated (b)(6), (b)

A change order was issued under CM 2014 on an emergency basis for the replacement of water mains associated with the Fox Creek development. (b)(6), (b) (7)(C) explained that the Detroit Economic Growth Council came to the DWSD and asked if they could replace the water mains in the area of Fox Creek and coordinate this with the construction activity for the housing development. (b)(6), (b) (7)(C) thought this was a good idea since the area would be under construction. This additional work was authorized under Change Order No. 1 for CM 2014. Two more change orders were issued under CM 2014. These change orders were for additional work in the city and the rationalization for them was that the DWSD could either close the contract or do

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more work at the same rate which had been negotiated two years prior. (b)(6), (b) (7)(C) explained that it would take two additional years to get a new contract through the system and the new rates would be higher than the existing contract rates given the 4 years time difference. There are approved ATP's for all of the change orders under CM 2014.

(b)(6), made the decision to assign contracts DWS 864 and DWS 865 (b)(6), (b) (7)(C) group although they typically would be placed under (b)(6), (b) (7)(C) group. (b)(6), (b) (7)(C) did not know why (b)(6), made this decision but opined that it could have had to do with work load. These contracts were patterned after CM 2014/2015 and were based on unit rates. DWS 864 was awarded to Lakeshore Engineering/DCG while DWS 865 was awarded to Inland/Xcel.

WS 623 was also managed by (b)(6), (b) (7)(C) group. A $7.5 million change order was issued under this contract for the addition of work. (b)(6), (b) was the prime contractor on this project. The Michigan Department of Transportation notified the DWSD that they would be repaving large sections of 8 Mile Road and thus the ability to coordinate the replacement of water mains with the repaving of the road was advantageous to the city. The change order was issued on an emergency basis and this along with (b)(6), (b) claim that due to the MDOT's prohibition on work being performed during peak traffic times was used to justify the higher unit rates for this work. Either (b)(6), or someone above (b) had to authorize the higher unit rates.

(b)(6), (b) (7) contacted (b)(6), (b) (7)(C) and asked for assistance in transporting soil which had been stockpiled at the DWSD Huber yard. (b)(6), did not have the budget to transport the soil which was contaminated, to a landfill. (b)(6), (b) (7)(C) attended a staff meeting where the situation was discussed. (b)(6), (b) (7)(C) explained that (b)(6), (b) was paid to transport the soils to a landfill and referred to this as a "pay through" situation. (b)(6), (b) (7)(C) confirmed that funds from WS 623 were used to pay (b)(6), (b) for the transportation. (b)(6), (b) (7)(C) is not sure why (b)(6), (b) was selected over another contractor but opined that it was due to the fact that WS 623 had monies available verses other contracts.

(b)(6), (b) (7)(C) oversaw the execution of DWS 849 which was awarded to Lakeshore. (b)(6), was the project engineer on this contract. (b)(6), (b) (7)(C) thought that (b)(6), performed the excavation work on the contract while Lanzo Lining did the repairs. (b)(6), (b) (7)(C) was not aware of a dispute between (b)(6), and (b)(6), (b) on this contract or the fact that (b)(6), (b) was paid under the contract despite not having actually performed any work. The change order issued under this contract came about after the Riverfront Conservancy asked the DWSD if they could repair the outfalls which were located in the area of the Riverwalk, a development being overseen by the group. (b)(6), (b) (7)(C) participated in discussions on this topic with (b)(6), (b) (7) and (b)(6), (b). The group made the decision to add the outfalls to the DWS 849 contract for the same reason cited in adding work to CM 2014; that is the lower rates and time saving in avoiding of rebidding the contract.

The Oakwood CSO reconstruction was performed under PC 755. This contract was awarded to the joint venture of D'Agostini/LSE. (b)(6), (b) (7) was a subcontractor which performed a lot of the work. The contract was let in 2006 and is scheduled to conclude in June of 2011. (b)(6), (b) (7)(C) confirmed that soils contaminated with elevated levels of arsenic were removed from the site. (b)(6), (b) (7)(C) offered to check with the DWSD staff as to who were the contractors which transported the soil from the site.

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(b)(6), (b) (7)(C) and SA (b)(6), (b) (7) reviewed documents related to contract CS 1387. (b)(6), (b) (7)(C) recalled writing a memo in support of the contract and disputing allegations made by (b)(6), (b) of the DWSD Contracts & Grants section regarding the scoring of the bids. (b)(6), (b) (7)(C) heard that the contract had been cancelled or pulled but never received any official notice. This is the first time (b)(6), (b) (7)(C) had seen a contract pulled and it did not make sense to (b) since the department had invested resources to develop and issue the request for proposal. (b)(6), (b) (7)(C) is not aware of any other contractors for construction inspection services.

Regarding the text message exchange between (b)(6), (b) and (b)(6), (b) (7)(C) in which (b)(6), (b) (7)(C) is mentioned, (b)(6), (b) (7)(C) stated that (b was shocked when (b first saw it. (b)(6), (b) (7)(C) was taken aback that (b)(6), (b) would use (b) name in conjunction with (b)(6), (b) especially when discussing a contract which had not been awarded. (b)(6), (b) (7)(C) estimated that (b had met or talked with (b)(6), (b) at best twelve times through the years.

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