

Brandon J. Patty

Clerk of the Circuit Court and
Comptroller



Mark P. Miner

Chief Deputy Clerk

**Office of the Inspector General
Clerk of the Circuit Court
and County Comptroller
St. Johns County, Florida**

November 12, 2021

REPORT NO. 2021I-02

To: Hunter S. Conrad, Esq., County Administrator

From: Nilsa Arissa, Inspector General

CC: The Honorable Brandon J. Patty, Clerk of the Circuit Court and County Comptroller
Mark P. Miner, Chief Deputy Clerk

In May 2021, the Office of Inspector General (OIG) received a complaint from a Supervisory Control and Data Acquisition (SCADA) Department employee alleging abuse of power regarding Rick Nelson, a SCADA Department manager within the St. Johns County Utility Department.

As part of the complaint intake process, OIG reviewed and determined that the disclosure demonstrated reasonable cause for protection under the Whistle-Blower's Act, Florida Statutes (F.S.) §112.3187 – 112.318. The Complainant was designated by the OIG as a Whistle-blower (WB).

After conducting a preliminary analysis of the allegations and pursuant to F.S. §112.313(6), the OIG referred the complaint to the St. Johns County Sheriff's Office (SJSO) and Office of the State Attorney for the Seventh Judicial Circuit Court (SAO) for review of potential criminal violations. SJSO assigned an investigative case number in June 2021 with the understanding that criminal activity was likely and would be determined during the review of subpoenaed information, interviews, and an assessment independent of OIG.

The OIG conducted an administrative investigation with information provided by the WB and focused primarily on the following allegations: 1) abuse of power, 2) preferential treatment through bid tampering, 3) official misconduct, and 4) falsifying records, falling under ethical violations covered in F.S. §112.313 (6).

The investigation was performed in compliance with the Principles and Standards for Office of Inspector General and The Florida Inspectors General Standards Manual from The Commission for Florida Law Enforcement Accreditation.

The Office of Inspector General uses the following terminology for the conclusion of finding(s):

Founded – There is sufficient evidence to justify a conclusion that the allegation is true.

Unfounded – Allegation is proved to be false or there is no credible evidence to support it.

Unsubstantiated – There is insufficient evidence to either prove or disprove the allegation.

The OIG reviewed St. Johns County policies, procedures, systemic audit trails, and current and archived records to establish timelines and corroborate findings. The Florida Statutes and Florida State Division of Corporations were the authoritative sources used for confirmation of statutes and letters of incorporation, respectively. The OIG established a chart that included Mr. Nelson and the relationship between department employees, vendors of interest and their representatives. The OIG documented and presented key events to law enforcement authorities for consideration of criminal activity. Resources engaged during the investigation included County Administration Human Resources and Purchasing personnel, SJSO, SAO, and peer IG offices providing insight, knowledge, historical experience, and interpretation of policy and statutes applicable.

In violation of F.S. §112.313 (6), and SJC Purchasing Policy section 301.7.1, in reference to abuse of power: The WB alleged Mr. Nelson used his authority as an employee of the SCADA Utilities Department to secure a benefit for himself through the purchasing of products from TFS. Mr. Nelson is a principal owner of TFS and is registered as such with the Florida Department of State, Division of Corporation. The OIG contacted the St. Johns County Human Resources and the county Purchasing Department to determine if a disclosure agreement between the county and Mr. Nelson was on file. Both HR and Purchasing stated that no agreement was on file or could be on file as such an agreement is prohibited by Florida Statutes. F.S. §112.313 and proves the allegation to be founded.

In violation of F.S. §112.313 (6) and SJC Purchasing Policy section 301.7.2, in reference to preferential treatment through bid tampering: The WB alleged Mr. Nelson provided preferential treatment during the bidding and awarding process to TFS. Records for all bids involving TFS and managed by Mr. Nelson beginning with his hire date in January 2012 through year to date were reviewed. The OIG found that the same three vendors (TFS, 4RF, and Layne) were used for the bids with TFS winning the bid every time. Supporting documentation and electronic records were reviewed in which anomalies were found. These anomalies explain why the TFS bid was the lowest and winning bid, confirming the preferential treatment, and therefore inferring bid tampering during the competitive quotation process. In the interview summary provided by SAO, the 4RF vendor representative indicated that 4RF sells to two channelers in Florida: TFS and James Layne. This confirms OIG findings of bid tampering through the confirmation of the business relationship of the three vendors identified through the interview process and proves the allegation to be founded.

In violation of F.S. §112.313 (6) and SJC Purchasing Policy section 302.4.1. in reference to official misconduct: The WB alleged Mr. Nelson ordered his subordinates and contacts to pursue and use the services of TFS despite the vendor not being designated as a sole source. Supporting documentation and electronic records were reviewed, and convincing and sufficient evidence was found to corroborate the allegation. To further corroborate the allegation, OIG reviewed purchase card (P-card) activity and supporting documentation, including available open balances on SCADA employee cards, which confirmed that TFS purchases were made by multiple employees under the direction of Mr. Nelson. The interview summaries provided by SAO included statements from three employees confirming Mr. Nelson requested P-card balances and cards and that he provided the direction for the TFS purchases. These documents, records and statements confirm the allegation of official misconduct to be founded.

In violation of F.S. §112.313 (6) and SJC Purchasing Policy section 301.7.2, in reference to falsifying records: The WB alleged Mr. Nelson ordered his subordinates to falsify records by covering information on invoices with blank pieces of paper, copying, and attaching those manipulated copies as support for the payment of an invoice from TESSCO. A review of systemic audit trails found that Mr. Nelson's subordinates questioned the manipulation of invoices but proceeded to act as instructed and covered the TFS account number on the TESSCO invoice that was used for ordering County supplies. The falsification of these records is inferred and inappropriate. The interview summaries provided by SAO included statements from two employees confirming Mr. Nelson requested invoices be manipulated to cover the addresses. According to a department supervisor interviewed, the invoices addressed to TFS were brought to the attention of Mr. Nelson, who in return had the invoices manipulated as described above, scanned, and attached as supporting documentation for the processing of the P-Card expense. This confirms the allegation of falsifying records to be founded.

In July 2021, SAO provided OIG with statements received during the serving of a subpoena duces tecum (a writ requiring a witness to attend court and bring relevant documents) to Ronald P. Reyes, registered agent, and president of TFS. The statements provided to OIG were responses to questions posed by SAO to Mr. Reyes. Mr. Reyes confirmed Mr. Nelson is the vice-president and treasurer, holds 50% percent interest in TFS, and has been in business at various times since 1986. Independent of SAO, the OIG confirmed the 50% ownership of Mr. Nelson through a Florida Division of Corporations records search. These statements and record of ownership confirmed the allegation of violation of misuse of public position as stated in F.S. §112.313(6) that "*no public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.*" to be founded.

During the criminal investigation, two instances were reported by the WB when they were placed in an uncomfortable position by SCADA Management. Inappropriate questions and comments made to WB appeared to be interrogatory and led the WB to feel intimidated. To mitigate the risk of retaliation against the WB and provide protections pursuant to F.S. §112.3189, OIG reported the instances to SAO and SJSO, and they addressed it. These actions prompted OIG to attempt to access the surveillance video of the SCADA Utilities facility and area where the WB was interrogated. OIG did not find these locations in the CompleteView Video Management Software

(CV VMS) inferring OIG had no visibility. OIG addressed the concern with the Director of Facilities, Ms. Katie Diaz, responsible for BCC surveillance. Ms. Diaz confirmed OIG has no visibility to SCADA Utilities, Ponte Vedra, Hastings, and HIU, as these locations are not part of the CV VMS. They are on independent surveillance systems managed only by designated personnel at the location and are not available to OIG or the Director of Facilities. The restricted access could have potentially impeded transparency in the safeguarding of County resources.

The OIG concluded all allegations in the complaint received from the WB; abuse of power, preferential treatment through bid tampering, official misconduct, and falsifying records are in violation of F.S. §112.313(6) and SJC Purchasing Policy 301.7 and 302.4 and were founded. To further support its conclusion, informational updates received, interview summaries and recordings, admissions by the defendants, and business records reviewed received from SAO at the conclusion of their criminal investigation corroborated OIG findings. SAO and SJSO concluded probable cause exists in the violation of the afore listed ethical statutes and inferred criminal action in F.S. §838.022. Further review of the extent and materiality of the violations did not meet the standard of proof beyond a reasonable doubt; therefore, law enforcement officials did not pursue criminal charges. However, OIG determined the evidence obtained was sufficient to prove the actions of Mr. Nelson were highly and substantially more probable to be true than not and met the standard of proof of “clear and convincing” to conclude the allegations reported by the WB were founded.

Based on updates from OIG, SAO, and SJSO, County Human Resources took administrative action and placed Mr. Nelson under administrative leave effective 7/29/2021 and throughout the investigation.

The recommendations listed below are predicated on the OIG’s findings on ethical violations and confirmation of the same through documented records provided by SAO.

Recommendations

The OIG recommends the following to County Administration:

1. Should communicate, impose, and enforce the ramifications for the violation of F.S. §112.313 – Misuse of power found under F.S. §112.311(5) *“It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.”*
2. Develop and implement a policy to approve purchases in advance by establishing an appropriate documented workflow authorization and approval process.
3. Add controls, enhance procedures and reporting to include the safeguarding of inventory, allocation to projects, and existence through traceable key identifiers such as serial numbers. A master list of inventories and allocations should be maintained and available for audits.

4. Designate a department of record to hold and monitor documentation related to secondary employment, disclosed, or known relationships ensuring compliance with policies and statutes at all levels.
5. Enforce, track, and retain participation documentation in ethics training of all County employees with the authority to make purchases.
6. Provide transparency and accountability by centralizing surveillance to include all County facilities, in particular those managed independently SCADA Utilities, Ponte Vedra, and Hastings.

We appreciate the cooperation and assistance of the St. Johns County Purchasing and Human Resources Department under the St. Johns County Administration during our investigation.

If you have any questions or would like to discuss the results further, do not hesitate to contact the Office of the Inspector General.

Respectfully,



Nilsa Arissa, CIG
Inspector General