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September 22, 2016

The Honorable Loretta E. Lynch
 Attorney General
 United States Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, DC 20530-0001

Dear Attorney General Lynch,

This is a formal referral for the Department of Justice (DOJ) to conduct a criminal investigation into whether current and former VA officials, and Mr. Glenn Haggstrom, the former Principal Executive Director of the VA Office of Acquisition, Logistics, and Construction, committed perjury, misled or withheld information from Members of Congress, or made otherwise unlawful statements in testimony and communications relevant to the construction of the Aurora, Colorado VA Medical Center. The Committee on Veterans' Affairs has been investigating issues surrounding this project for many years. We have held numerous hearings where VA representatives have testified about the issues that led to this project ultimately becoming approximately \$1 billion over budget and years behind schedule. Prior to December 2014, when the Civilian Board of Contract Appeals found that VA breached its contract with the prime contractor on the project, VA representatives consistently downplayed and disputed substantiated cost overruns in Aurora and other major construction projects, in hearings and in public statements. Many Committee members have stated for years that VA witnesses' hearing testimonies regarding these overruns were false, and we are concerned that these witnesses intentionally withheld information or provided knowingly false testimony during hearings before this Committee.

Yesterday, the VA Office of Inspector General (OIG) issued a report substantiating many of the issues uncovered by this Committee, and it also highlighted that at least one VA official, Mr. Glenn Haggstrom, possessed information on the rising cost of construction that was contrary to testimony he provided in many of these hearings. Regarding Haggstrom, the OIG found,

Although the former Principal Executive Director of the Office of Acquisition, Logistics, and Construction, Mr. Glenn Haggstrom, possessed information that the Denver project was moving toward significantly exceeding the budget, he did not share this information with Congress while testifying in May 2013 and April 2014.... Mr. Haggstrom possessed information that construction project was exceeding the budget, on both occasions when he testified before Congress, VA

Attachment

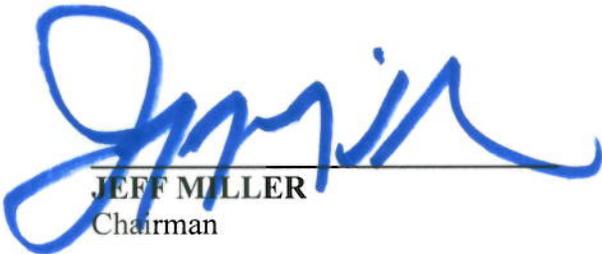
maintained that KT was contractually bound to complete the project within the ceiling price of \$610 million contained within SA-07.

At issue are statements made at three hearings by Haggstrom and/or Ms. Stella Fiotes, Executive Director of VA's Office of Construction & Facilities Management. Notably, in every invitation to testify at Committee oversight hearings, all witnesses, including those representing VA, are reminded that the testimony they will provide will be subject to sections 1001, 1505, and 1621 of Title 18 of the U.S. Code. Relevant excerpts of those hearings are attached to this letter.

As such, we respectfully request that you open an investigation to determine whether Haggstrom and/or Fiotes made unlawful statements (perjury or otherwise) in providing false testimony in the three subject hearings. Additionally, we request that, if during the course of your investigation you find evidence that misleading or otherwise unlawful statements were made to Congress, your investigation include a determination of whether any VA official instructed VA representatives to make otherwise unlawful statements or provide misleading information to this Committee. If you determine that Haggstrom and/or Fiotes did in fact make an unlawful statement, or that others conspired with, instructed, or encouraged them to do the same, we request that you pursue immediate prosecution.

Please note that the Committee has issued a subpoena to the department regarding an Administrative Investigation Board report concerning the Aurora construction project. As such, we would ask you to begin conducting this investigation after VA has fully complied with the subpoena, which has a full and final production date of Wednesday, September 28, 2016. We ask this to eliminate any attempt by VA to cite a concurrent investigation as a means to withhold documentation from either your office or the Committee. If you have any questions, please contact Mr. Jon Towers, Majority Staff Director, at (202) 225-3527.

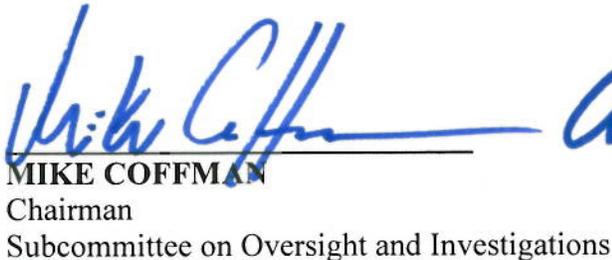
Sincerely,



JEFF MILLER
Chairman



MARK TAKANO
Acting Ranking Member



MIKE COFFMAN
Chairman
Subcommittee on Oversight and Investigations



ANN MCLANE KUSTER
Ranking Member
Subcommittee on Oversight and Investigations



DAN BENISHEK
Chairman
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JULIA BROWNLEY
Ranking Member
Subcommittee on Health



RALPH ABRAHAM
Chairman
Subcommittee on Disability Assistance and
Memorial Affairs



DINA TITUS
Ranking Member
Subcommittee on Disability Assistance and
Memorial Affairs



BRAD WENSTRUP
Chairman
Subcommittee on Economic Opportunity



BETO O'ROURKE



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AUMUA AMATA COLEMAN RADEWAGEN

Mike Bost

MIKE BOST

1. May 7, 2013 | VA Construction Policy: Failed Plans Result in Plans that Fail¹

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Mr. COFFMAN: Mr. Haggstrom, the VA has 11 projects with a range of cost increases from 4 to 59 percent. In all but two of these projects the cost increases are over 10 percent. Has VA officially informed Congress regarding all of these increases?

Mr. HAGGSTROM: Mr. Chairman, I don't know specifically which projects you are referencing. But to the best of my knowledge we are very diligent in notifying the Congress if there are cost overruns, and the amount of those costs, we must notify Congress.

...

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Mr. O'ROURKE: ... When these projects go over these many months or these many dollars, what does it do to the projects behind them?

Mr. HAGGSTROM. In terms of the time, it has no effect. When you look at —when you say “cost overruns,” what are we talking about in terms of a cost overrun? When you look at the projects that are under construction today, we are within the appropriated amounts that Congress has provided to us to construct those facilities, and so if a cost overrun could have two different meanings, the cost overrun vis-&-vis what the original project was bid at and —

...

2. March 25, 2014 | Legislative Hearing on H.R. 3593, H.R. 4261, H.R. 4281 and other Draft Legislation²

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Mr. COFFMAN: Our thanks to the panel. Okay. Ms. Fiotes, in Denver VA asked for bids based on the presumption that it would produce a \$604 million project for the hospital, but it appears VA has produced potentially a billion dollar incomplete design which they provided eight months after the bid process was completed. How can VA prevent such loss of control in future designs?

Ms. FIOTES: Mr. Chairman, we believe that the project designs we have delivered, albeit somewhat later than originally anticipated, are in fact able to be constructed within the appropriated amount for this project.

...

¹ <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82234/pdf/CHRG-113hhrg82234.pdf>.

² <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg87671/pdf/CHRG-113hhrg87671.pdf>.

3. April 22, 2014 | Construction Conundrums: A Review of Continued Delays and Cost Overruns at The Replacement Aurora, Colorado VAMC³

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Mr. HAGGSTROM: But clearly, there has been no change in the project scope or complexity dramatic enough to justify the contractor's alleged cost of over \$1 billion, nor has the contractor provided the required supporting documentation to VA to justify their estimated cost increase.

...

Although there may be additional changes in cost and schedule, based on all pertinent information currently available to us today, VA has the funds necessary to complete this project.

...

Mr. COFFMAN: Thank you, Mr. Haggstrom. Mr. Haggstrom, I think when we met before, you gave me the \$604 million figure as the figure that this hospital could be built for. Can you reflect on that?

Mr. HAGGSTROM: ... The contract that was signed has a target price of \$604 million with a ceiling price of \$610 million, at that point in time. Since then, there have been numerous change orders and adjustment to the contract, which now bring it up to \$630 million as the target price.

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The CHAIRMAN: I mean, again, we are dickering, supposedly, about a \$1 billion number. You keep driving it back to \$600 million. But \$1 billion is probably pretty close to accurate, even if you don't factor in any of the change orders that are on the table today. So we could be talking about over that, correct?

Mr. HAGGSTROM: Again, if you are looking at the cost of construction, that is established at \$630 million, plus whatever activation, potentially, that cost.

...

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Mr. GARDNER: Thank you, Mr. Chairman. Mr. Haggstrom, in terms of the budget, we have seen on the Civilian Board of Contract Appeals Web site that throughout 2012 and 2013, K.T. was notifying the VA that the design was turning higher and higher, and is now over \$1 billion. Why didn't the VA share this information with the committee and Congress, rather than telling us that the project was within budget, as it continues to do so today?

Mr. HAGGSTROM: Mr. Gardner, the contract that K.T. signed was for \$604 million. Interestingly enough, we always try to reach a firm fixed-price contract. So in March

³ <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg87678/pdf/CHRG-113hrg87678.pdf>.

2013, K.T. provided to the department a firm fixed price proposal of \$898 million. With that proposal, we did the evaluation and we rejected it. And we rejected it because there was no supporting documentation that accompanied it that justified the increase in price. Interestingly enough, those proposals were based on 100 percent design drawings, and they had complete access. Today, after those 100 percent design drawings, that firm fixed price proposal, now, I believe, K.T. is saying this cost is over \$1 billion. Well, what has changed? That is what we are asking K.T. to tell us. What has changed in terms of the project scope on this, that even after they had access to this information, provided a firm fixed-price contract, now a year later, it is again grown over \$200 million. So based on the facts, and, Mr. Gardner, that is all I can go on, are the facts. I can't go on conjecture of somebody just saying it is going to happen. I have to have the facts in front of me to understand what those changes are.

...