

September 28, 2011

Hon. Dennis M. Walcott
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

FINAL REPORT

**Re: Future Technology Associates, LLC, Tamer Sevintuna,
Jonathan Krohe, Judith Hederman, Swaroop Atre, Kabir Rekhi,
Mustafa Cem Arpaci**

SCI Case No. 2009-2871

Dear Chancellor Walcott:

This is the final report referred to in the executive summary which was also released today. An investigation conducted by the Office of the Special Commissioner of Investigation (“SCI”) has substantiated that Future Technology Associates, LLC (“FTA”) submitted false filings with the New York State Office of General Services (“OGS”) in order to obtain a contract with the Department of Education (“DOE”) in 2005. We have also substantiated that FTA and its owners, Tamer Sevintuna and Jonathan Krohe, violated the terms of FTA’s contract with the DOE and committed fraud. Sevintuna and Krohe submitted false documents to the DOE, the Mayor’s Office of Contract Services (“MOCS”), the New York City Comptroller’s Office (“NYC Comptroller”), SCI and a New York State Supreme Court Judge. They concealed from government agencies and the New York Daily News their ownership of and subcontracting arrangements with a number of companies, including Krono Bilgisayer, Ltd. (“Krono”), a company they established in Turkey.¹ The purpose of these deceptions was to retain this contract and to significantly enhance FTA’s profits.

¹ Sevintuna and Krohe were assisted in this concealment by their employee, Mustafa Cem Arpaci.

SCI has further determined that Judith Hederman, a high-level official in the DOE Division of Financial Operations (“DFO”), who had significant oversight concerning the 2005 contract with FTA and was the Chancellor’s Designee to oversee FTA’s 2009 DOE contract, supplied confidential information to Krohe regarding the DOE’s concerns about FTA. Hederman also falsely denied in sworn testimony that she had a close personal relationship with Krohe. After Hederman’s attorney acknowledged that her client’s testimony concerning her relationship with Krohe should not be relied upon, Hederman returned to SCI and was placed under oath. She asserted the Fifth Amendment privilege against self-incrimination to all substantive questions asked of her.

Krohe and Sevintuna, contrary to FTA’s contractual obligation to cooperate with SCI, repeatedly adjourned scheduled interviews and were subpoenaed to appear and give testimony. Along with Swaroop Atre, an FTA employee, they successfully moved to quash SCI’s subpoenas. When, months later, they agreed to accept subpoenas from SCI, Sevintuna, Krohe and Atre each asserted the Fifth Amendment privilege to all substantive questions.

Kabir Rekhi, the proprietor of Quantanomics, Inc., also asserted the Fifth Amendment privilege when subpoenaed to testify by SCI. Quantanomics was a subcontractor of FTA in servicing the DOE, an arrangement prohibited by FTA’s contracts with the Department.

As a result of this investigation, the DOE ended its contract with FTA and Judith Hederman resigned from the DOE.

This investigation began in July 2009 after Juan Gonzalez, a columnist for the New York Daily News wrote a series of articles questioning the FTA contracts with the DOE.

THE CONTRACTS

The DOE entered into contracts with FTA in 2005 and 2009 (collectively the “DOE-FTA contracts”).² In the 2005 contract, FTA was engaged by the DOE as a

² According to the website of the Florida Secretary of State, FTA, then called Griffin Management, LLC, was established in February 2002 with Thomas M. Griffin as the manager. In September 2003, the firm changed its name to Hillsborough Home Inspection, LLC. Seven months later, it was renamed “Financial Technology Associates, LLC,” and Ava Lake became a manager of the firm. She was also known as Ava L. Sevintuna. Two months later, in June 2004, Lake changed the company name a fourth time, to its current name, FTA. Lake is the sole person identified as an FTA manager or member in annual reports filed with the Secretary of State through May 2007. The report filed that month for 2007 contained Lake’s resignation, and added Sevintuna and Krohe as managing members or members. This was the first instance in which the names of Sevintuna or Krohe appeared in FTA’s annual reports. In December 2006, Ava L. Sevintuna filed for divorce from Medar Neil Sevintuna in Duval County, Florida. Lake has had several Florida residences. She was not interviewed in this investigation.

successor to Tier Technologies, Inc. (“Tier”) which had a long-term contract to service the DOE’s Financial Accounting Management Information Systems (“FAMIS”), and other computer-based programs including payroll and contract aid systems. Sevintuna and Krohe had been employed by Tier (and its predecessor, KPMG LLP) on site at the DOE. In the course of five and one-half years, the DOE paid FTA more than \$74 million.

Vincent Giordano, then the Executive Director of the DOE DFO, was interviewed under oath by SCI investigators. He said that in 2005 he told Bruce Feig, then the DOE Chief Financial Officer, that the DOE should consider hiring the Tier consultants. Giordano said that he believed that the DOE would save money by having the consultants on the DOE payroll performing the same services they did under the DOE’s contract with Tier. Feig directed Giordano to discuss the matter with Sevintuna, who headed Tier’s on-site group at the DOE. According to Giordano, Sevintuna said that it was not economically viable for him and the “core” of the Tier consultants to become DOE employees. Sevintuna suggested instead that he could hire the Tier consultants to work for his “own company,” which would provide their services to the DOE under a new contract. Giordano said that he was of the impression that Sevintuna did not have a company at the time, but would establish one to accommodate this plan. Giordano said that he did not speak with any other Tier employees about joining the DOE payroll, and that at Feig’s direction, he moved forward with the plan proposed by Sevintuna.

In a sworn affidavit filed by Krohe in November 2010 in the New York Supreme Court in support of the motion to quash SCI’s subpoenas for his testimony (and that of Sevintuna and Atre), he declared:

But by the time the Tier contract came up for renewal in July 2005, Mr. Sevintuna and I had become dissatisfied with Tier management. We resigned from Tier and formed a new company, FTA, which consisted of many of the Tier employees who had worked on the DOE projects.

Krohe’s account is misleading. Giordano and Tier executives interviewed by SCI investigators said that Sevintuna and Krohe remained employed by Tier until November 2005, when FTA succeeded Tier as DOE’s vendor.³

In a November 2005 memorandum to the DOE Committee on Contracts (“CoC”), Giordano requested permission for the DOE to end its contract with Tier more than seven

³ The last available Tier invoice to the DOE is for August 2005; it billed Sevintuna’s and Krohe’s services to the DOE through that entire month.

months prior to its expiration, and to negotiate a contract with FTA for the same services.⁴

Todd F. Vucovich, then a senior vice president of Tier and assigned to his firm's DOE account, was interviewed by an SCI investigator. He essentially corroborated Giordano's account: the early termination of their DOE contract was not at Tier's initiative, and the DOE had not expressed dissatisfaction with Tier's services. Vucovich said that he believed that Sevintuna had "leveraged his relationship" with the DOE to obtain the contract from his employer, Tier.⁵

Giordano's proposal to the CoC stated that:

FTA's owner [Sevintuna] is currently employed by Tier Technology, Inc. as the Sr. Project Manager on site at the DOE. FTA's owner has given assurance to the DFO that the company will employ all of the 18 Tier consultants currently working at the DOE, ensuring the continuity of service at the same level of expertise.

Giordano told SCI investigators that Sevintuna gave him this assurance verbally; he did not know if there had been any writings by Sevintuna or anyone from FTA concerning the assurance that it would employ all 18 of the Tier consultants.

Giordano's memo stated that "FTA has a state backdrop contract that expires 12/31/10 and is a business in good standing." However, according to Charlotte Breeyear of the New York State Comptroller's Office, FTA was never awarded any work under the OGS contract referred to by Giordano.

Documents provided to SCI by the Office of the State Comptroller show that OGS approved FTA's backdrop contract 15 months prior to Giordano's memo to the CoC. Ava Lake, a manager of FTA, submitted FTA's OGS application. It said that FTA had been in business for two years and had five employees, three of whom were in New York.⁶ Lake reported that FTA had no current contracts with governmental entities

⁴ The Committee was comprised of David Ross, William Joyce, Marlene Malamy, Helen Carmody, Debra Lamb, Shane Mulhern and Anne Wolf.

⁵ Sevintuna (and Krohe), at the time of Giordano's memo to the CoC, had been party to a non-competition agreement with Tier since February 2002. It provided, among other things, that during his employment (and for six months after the end of this employment), Sevintuna would not work on accounts he worked on for Tier as an independent consultant or as an employee of another firm. Sevintuna further agreed that he "shall not solicit or otherwise induce employees of Tier to become employed by [Sevintuna], or by a business with which [he] is affiliated; nor will [he] solicit members of Tier to leave Tier."

⁶ Actually, FTA had been in business by that name for only two months. As stated in footnote 2, the firm changed its name three times in the two years since it was founded as Griffin Management, LLC in February 2002.

outside of New York State. FTA's OGS application misleadingly cited four projects dating from 2002 as the company's requisite experience. The DOE is listed as the customer in each project, and Giordano and Richard Carlo of the DFO appear as references. FTA had yet to be awarded any work by the DOE, but the company claimed credit for work performed by (the then incumbent vendor) Tier. Eight days before Giordano's memo to the CoC, Lake certified to OGS that FTA's corporate profile remained unchanged since the previous August, and that the company still employed five people.

When interviewed by SCI investigators, Giordano said that he had not seen any documents concerning FTA's OGS contract. He expressed surprise that his name appeared in FTA's application to the State agency. He had no recollection of being asked to be a reference, or of anyone from OGS contacting him about the matter.⁷ Giordano was also surprised by FTA's claimed "experience" in the OGS application, as he believed that the company was not yet established, and that the described work was actually performed by Tier.⁸

Carlo also did not know that he was a reference in FTA's application to OGS until SCI investigators showed him a copy of the document. He confirmed that the DOE projects for which FTA claimed credit were actually performed by Tier. Carlo said that he was unaware that FTA existed prior to the company succeeding Tier at the DOE.

Giordano's memo advised the CoC that FTA's proposed billing rates would represent a savings of 28 percent per month over Tier's rates. His memo projected that FTA's annual billings would be approximately \$2.5 million, compared to the \$3.6 million that the DOE paid Tier for fiscal year 2005. To effect this change, Giordano requested settlement authority in the amount of \$780,000 to be paid to Tier to release its 18 consultants from non-compete agreements to enable them to service the DOE as FTA employees. A report issued to the DOE by the NYC Comptroller in July 2011 found this proposed payment by the DOE "inappropriate and contrary to standard business practice," and that it should have been borne by FTA.⁹ According to Giordano's memo, the savings by engaging FTA would allow the DOE to recoup the settlement paid to Tier in nine months. He told investigators that there was never any discussion of FTA paying this fee to Tier.

⁷ Giordano said that he never heard of Ava Lake.

⁸ The NYC Comptroller also found that FTA had misrepresented its experience in applying for the OGS contract. FTA had not been in existence before June 2004, and it claimed credit for work performed under Tier's contract with the DOE (described herein). See letter to Hon. Dennis Walcott by Deputy Comptroller H. Tina Kim, July 29, 2011 ("Letter Report on the Awarding of the Future Technology Associates, LLC, Contract in 2005 (FP11-117AL)").

⁹ *Id.*

An examination of Tier's bills by an SCI investigator found that each category of Tier's hourly rates in the invoices was lower than what Giordano reported to the CoC.¹⁰ For example, three Tier consultants, whose rates were said by Giordano to be \$128 and \$152 per hour, were billed at \$88 per hour.

Giordano was questioned about these rate comparisons by SCI investigators. Asked if he had undertaken or directed any study to determine whether the DOE's future needs would be the same as in the previous year, he replied in the negative and characterized his memo to the CoC as a "rush job." He said that he "probably" obtained FTA's rates listed in the appendix to the CoC memo from Sevintuna. Giordano did not bargain with him over the amounts. He said that he assumed that Tier's rates attached to his memo came from their invoices to the DOE. Giordano testified that he did not personally examine the invoices, and that he probably would have obtained these rates from other DFO employees.¹¹ When told by investigators that the Tier rates from the company's June 2005 invoices were lower in each category than those he reported to the CoC, he again expressed surprise.

Only 12 Tier consultants were specified in Tier's agreement with the DOE to void their non-compete agreements – not the 18 that Giordano listed in his memo to the CoC. The NYC Comptroller's report noted that the \$731,250 which the DOE ultimately agreed to pay Tier for the release of the 12 employees was "not a pro-rata reduction, which would have been expected after a 33 percent reduction (from 18 to 12) in the number of Tier employees FTA was to hire."¹²

The no-bid arrangement to replace Tier was approved by the CoC, and FTA was awarded a two-year requirements contract for per-diem information technology services (with a one-year optional extension), effective November 2005. The contract called for the services of the FTA consultants to be billed to the DOE on an hourly basis, and estimated – but did not limit – the annual cost at \$2.5 million. It required the work to be performed at the DOE facility at 65 Court Street. FTA had no office of its own, thus it did not incur any overhead costs (rent, computer systems, telephones, utilities, etc.).

Giordano's projected savings proved to be overly optimistic. By February 2006, FTA increased the number of assigned consultants in the \$110 per hour category to nine from the five listed in Giordano's November 2005 memo to the CoC. The \$80 per hour consultants doubled to six, and the lowest category – \$65 per hour – was reduced by two.

¹⁰ The NYC Comptroller's report also found the price comparisons between Tier and FTA cited by Giordano's memo to be flawed, and the projected savings of 28 percent "inflated." According to the report, the hourly fees paid to Tier in the last few months of its contract compared with the hourly fees of the first six months of FTA's contract showed an actual savings of only 20 percent. *Id.*

¹¹ SCI investigators interviewed the two DFO employees identified by Giordano. Each claimed not to have provided the rates cited in the memo to the CoC.

¹² See footnote 8, *supra*.

Based on FTA's February 2006 invoices, its group hourly rate amounted to \$2,325, a savings of 8.3 percent over Tier's rate, but far from the 28.5 percent stated in Giordano's memo. When FTA's February group hourly rate is compared to the same rate derived from Tier's actual June 2005 invoices, FTA's rate represents an increase of 7.6 percent. FTA's work through the end of 2006 cost the DOE \$5.5 million. FTA assigned more consultants to service the DOE contract. By July 2008, FTA had eliminated the \$65 per hour category, and billed the DOE for 50 consultants at \$110 per hour or more; only five consultants were in the lowest category – \$80 per hour. The firm was awarded extensions of the contract through April 2009, and continued to provide services to the DOE through the time they were awarded a new contract later that year, which is described below.

Nearly five years after Giordano's projection of a million dollars in savings was proved wrong by FTA's invoices, Krohe nevertheless presented it as fact. In a November 2010 sworn affidavit filed in support of FTA's motion to quash subpoenas for his testimony and that of Sevintuna, and Atre, their employee, Krohe told the Court that FTA "agreed to a steeply discounted contract (representing a reduction of \$1,000,000), and DOE continue [*sic*] to enjoy the same excellent service at a discount."¹³ As shown above, this savings – based on Giordano's analysis – represented only a non-binding estimate. Krohe did not inform the Court that FTA's billings for the first year were actually more than double the estimated amount in the contract.

The DOE issued a Request for Proposals ("RFP") for a successor contract which expanded the services under the general description "Financial Application Development and Support Services." Krohe's affidavit described above stated:

Approximately 30 contractors attended the initial RFP meeting, including blue-chip consulting companies such as IBM, Oracle, KPMG, Accenture, TEKMARK and CGI Information Systems. We submitted our proposal in January 2009, and after a year-long deliberation, DOE again awarded the contract to us in March 2010.¹⁴

In the next paragraph of the affidavit, Krohe stated, "[W]e were the low-bidder in the competitive bidding process outlined above."¹⁵

¹³ See *Future Technology Associates, LLC, et al. v. Special Commissioner of Investigation, et al.*, Sup. Ct, N.Y. Co., Index No. 115054/10, Affidavit of Jonathan Krohe in support of Order to Show Cause ("Krohe Aff.") ¶ 4.

¹⁴ *Id.*, Krohe Aff. ¶ 6.

¹⁵ *Id.*, Krohe Aff. ¶ 7.

Krohe failed to inform the Court that FTA was actually the sole bidder. While the RFP meeting was well attended, no other company submitted a proposal. Krohe misleadingly implied that FTA's proposal was in head-to-head competition with "blue-chip" firms, and that FTA bested them after DOE spent a year scrutinizing multiple bids.

Thus, FTA was awarded the successor three-year contract valued at \$43.3 million, which was effective in August 2009. It contained a one-year renewal option, valued at \$11.07 million. As in the predecessor contract, these sums were non-binding estimates, and the work of FTA's consultants was to be billed on an hourly basis.

SUBCONTRACTING WITHOUT AUTHORIZATION

On at least three occasions since 2003, SCI has investigated and reported on prohibited subcontracting by DOE computer consultants. In addition to violating the contract, the practice passes on needless additional costs to the DOE, results in the misuse of public funds, dissuades possible competition for DOE contracts from firms which do not engage in this prohibited practice, and removes levels of oversight from the DOE. Unauthorized (and undisclosed) subcontractors do not have written obligations to the DOE, which could leave the Department without recourse for a subcontractor's defective work, disclosure of confidential data, or other harm to the interests of the DOE.¹⁶

While both the 2005 and 2009 DOE-FTA contracts prohibited subcontracting without written authorization from the DOE, documents subpoenaed by SCI from FTA and other firms made clear that FTA had not complied with the subcontracting prohibition in the 2005 DOE contract, and had no intention of doing so in the 2009 contract. FTA subcontracted with no fewer than 16 companies to provide consultants beginning in 2006 and continuing well into the period of the 2009 contract. FTA's subcontracting included arrangements with companies to service the DOE-FTA contracts from overseas, which was also prohibited by the contracts. Through May 2010, approximately 80 consultants assigned by FTA to service its DOE contracts were the product of subcontracts with other companies.¹⁷

An attorney for FTA from the law firm of Pepper Hamilton LLP ("Pepper Hamilton") acknowledged this subcontracting in communications with SCI investigators. In December 2009, an SCI investigator contacted the attorney and advised him that the

¹⁶ See, e.g., letter to Joel I. Klein by Richard J. Condon dated February 12, 2008 (SCI Case No. 2007-0363), <http://www.nycsci.org/reports/02-08%20DynTek%20Inc%20%20Ltr.pdf>.

¹⁷ Of these 80 subcontracted consultants, 24 joined the FTA payroll, but only after more than a year with the subcontracting firm.

documents produced regarding FTA's consultants were incomplete. The attorney informed the investigator that some of the FTA consultants were "subcontracted." The investigator asked him to provide documents pertaining to the subcontracts, and confirmed the request in writing.

In March 2010, Pepper Hamilton provided some responsive documents, and a list, apparently self-generated, titled "FUTURE TECHNOLOGY ASSOCIATES SUBCONTRACTORS." The list identified seven companies located in Virginia, Michigan, and New Jersey.¹⁸ The accompanying letter from FTA's attorney said that "FTA has no correspondence with DOE representatives concerning the DOE's agreement to allow FTA to use of [*sic*] subcontractors."

Based on the list provided by Pepper Hamilton and subsequent interviews and documents obtained by subpoena, SCI investigators developed evidence which indicated that FTA engaged in subcontracting in the placement of computer consultants at the DOE. FTA did so repeatedly, and with more companies than Pepper Hamilton initially disclosed. DOE officials Judith Hederman, Richard Carlo, and Vincent Giordano each testified that they were unaware that FTA engaged in subcontracting, and that FTA did not ask them for permission to do so.

In March 2010, SCI investigators visited the Manhattan offices of Quantanomics, Inc., one of the subcontracting firms identified by Pepper Hamilton. Kabir Rekhi, the firm's owner, confirmed that he contracted with Sevintuna to assign consultants to FTA for its work with the DOE. He reported that Quantanomics employed some of these consultants and that he contracted with and paid additional firms for others. He gave the investigators a list of six consultants whom he said were currently assigned to the DOE-FTA contract. The list showed that two were employed by Quantanomics, but the remaining consultants were the product of further subcontracts with four additional firms.

Rekhi accepted an SCI subpoena for further documents pertaining to FTA and the DOE. An attorney for Quantanomics and Rekhi subsequently provided responsive documents. They indicated that Quantanomics had placed 20 consultants with FTA for the DOE. Quantanomics contracted with seven separate firms for seven consultants then servicing the DOE-FTA contract. Quantanomics paid these firms approximately \$44 per hour for the consultants' services and, in turn, billed FTA \$64 per hour. FTA then billed the DOE \$110 per hour.¹⁹ This "second-tier" contracting was specifically prohibited in

¹⁸ One company on the list was purported to be located at "36 Richman [*sic*] Terrace, Staten Island, NJ [*sic*]." Investigators visited 36 Richmond Terrace on Staten Island, but found no evidence of the named business at that address.

¹⁹ Two salaried employees of Quantanomics who were also billed to FTA at \$64 per hour (and then to the DOE at \$110 per hour) were compensated at approximately \$41.75 per hour.

the 2009 DOE-FTA contract, even in instances in which written authorization for subcontracting had been obtained.

An SCI attorney contacted Rekhi's attorney to schedule an interview concerning Quantanomics' business with FTA. Rekhi's attorney initially agreed to accept a subpoena and produce his client, but later asked to instead provide a letter stating that Rekhi would assert the Fifth Amendment privilege against self-incrimination in response to SCI's inquiries. Rekhi's attorney did not specify a reason for his client's assertion of the privilege. SCI declined this arrangement and Rekhi appeared with counsel and was placed under oath. Other than identifying himself, Rekhi asserted the Fifth Amendment privilege in response to all questions asked of him, including those concerning business dealings with FTA, Sevintuna and Krohe.

In April 2010, Gibson, Dunn & Crutcher LLP ("Gibson Dunn"), which succeeded Pepper Hamilton as FTA's counsel, produced documents pursuant to an SCI subpoena which had been served on Krohe. These records revealed that since 2006, FTA had subcontracted with 15 companies – twice the number identified in Pepper Hamilton's list – to provide consultants to the DOE.

By subpoena, SCI sought records from some of the subcontracting firms. Most were not located in New York and were beyond SCI's subpoena jurisdiction. If FTA had followed the dictates of its contract with the DOE and sought and received written permission to engage subcontractors, these firms would have been bound by the same terms as FTA. Thus, the subcontracting firms would have been obligated to produce pertinent records at SCI's request.

In March 2010, SCI investigators visited the Manhattan office of Modis, Inc. ("Modis"), a Florida company which provided consultants to FTA. The office manager referred the investigators to Bridgette Richardson, a Modis colleague based in Virginia. By telephone, Richardson advised an SCI investigator that FTA was a Modis client and that Sevintuna was their contact with FTA. Richardson said that at FTA's request, Mera Consulting, LLC ("Mera") was substituted for FTA in Modis's agreements with FTA and in Modis's billings for consultants servicing the DOE-FTA contracts.²⁰ Richardson agreed to accept SCI's subpoena for pertinent documents.

An examination of Modis's records showed that it had provided consultants to service the DOE-FTA contracts since October 2006. Through May 2010, some of the 46 consultants placed by Modis eventually joined the FTA payroll, but seven did not do so for more than a year, and one for more than two years. Eighteen Modis consultants never

²⁰ This was SCI's first indication that Mera, which was established at Sevintuna's direction (but which was owned by Krohe), was involved in the DOE-FTA contracts.

joined FTA. Of this group, four worked as subcontractors for more than a year, three for more than two years.

Initially, Gibson Dunn echoed Pepper Hamilton's frank acknowledgement that its client engaged in subcontracting. In April 2010, FTA's successor counsel presented SCI with a tabbed binder titled "FTA – Background Information on 6 SCI Selected Subcontractors" with (limited) information concerning six identified companies engaged by FTA. Less than a month later, Gibson Dunn abruptly changed tack. It presented SCI with a letter which argued that its client did not engage in subcontracting. It referred to the consultants assigned to the DOE through contracts with other vendors as "Temporary Contract Employees" or "TCEs." However, as in the case of Modis, documents obtained by SCI from FTA and some of its other subcontractors show that many of these consultants had been assigned to the FTA-DOE contracts for more than a year, and some for more than two years, without having joined the FTA payroll.²¹

ACCESS TO DOE DATA BY CONSULTANTS OVERSEAS

In its use of three subcontracting firms, FTA violated another requirement of its contracts with DOE, which mandated that its services be performed at DOE offices in Brooklyn. Instead, beginning in 2006, FTA arranged with three companies to service the contracts from India and Turkey.²² In order for FTA to utilize these overseas consultants, they had to get DOE DFO officials to allow remote access to secure DOE websites. The officials, Richard Carlo, Vincent Giordano and Maria Conklin, who granted the permission, told SCI investigators that they were unaware that the eight persons identified in the authorization forms submitted to them by FTA were actually located overseas. None of the forms which the DOE officials signed made any reference to Turkey or India, but described the stated purpose of the need for remote access as: "Production support during off work hours and weekends."

In addition to violating the subcontracting and work location restrictions of the DOE contract with FTA, its arrangement with the overseas consulting firms Krono and IPS Bilgisayer, Ltd. ("IPS") in Turkey, and EC Group International, Inc. ("EC Group") in India raised concerns regarding the security of DOE computer data, including information about DOE finances, employees, and students. The DOE-FTA contracts set forth specific requirements concerning the security of and access to DOE's computer data and information systems. The 2009 contract directed, among other things, that:

²¹ Gibson Dunn's argument is further refuted by the no subcontracting clause of the 2009 DOE-FTA contract. At the request of Randy Miller, FTA's contract attorney, it was modified to accommodate self-employed consultants engaged by FTA, but not those on the payroll of other companies.

²² Sevintuna and Krohe owned the two firms in Turkey. See pp. 13 – 16, *infra*.

Contracts between third parties and the [DOE] shall include requirements for maintaining privacy of information and address confidentiality, integrity, and availability requirements.

As the DOE had no contracts with Krono, IPS, or EC Group, there was no requirement for these firms to adhere to these critical concerns.

SCI investigators interviewed Desmond White, Director of Security for Administration for the DOE Division of Instructional and Information Technology. At the investigators' request, he examined the electronic data concerning external access to the DOE computer network. While unable to determine the precise source, he stated that between January 2010 and November 8, 2010, the DOE network had been accessed on 1,400 occasions from a location in India, and 2,400 times from a location in Turkey. White identified Internet "IP" addresses with the names of six consultants from Krono and three consultants with EC Group as among those who had accessed the DOE network from abroad.

SCI investigators interviewed Kevin Monrose, the DOE Deputy Chief Administrator for Payroll. He said that he had supervised FTA consultants in their development of payroll applications, including some working from Turkey. Monrose said that he had spoken with Ozan Cetin and Mustafa Cem Arpaci in Turkey via a conference call as they simultaneously reviewed a "test region" on-screen prior to an application's deployment.²³ According to Monrose, "real data" including DOE employees' names, file numbers and Social Security Numbers were displayed in these test programs. Monrose said that he was unaware that FTA was prohibited from working off-site, and that he understood Arpaci and Cetin to be FTA employees.

Four other DOE officials on Hederman's staff described taking part in conference calls in which consultants in Turkey had access to DOE data.

Prior to asserting the Fifth Amendment privilege, Hederman confirmed for investigators her knowledge of and participation in the calls and access to data described by her staff. Although she was the Chancellor's Designee in the 2009 DOE-FTA contract, she claimed that she was unaware that the contract required FTA's work to be performed on-site.

²³ Cetin's and Arpaci's names appear in Krono (and IPS) invoices to FTA. Their names also appear in FTA's invoices to the DOE.

FTA'S PRINCIPALS CONCEALED THEIR OWNERSHIP OF KRONO AND IPS FROM THE DOE, MOCS, THE NYC COMPTROLLER, OGS, AND SCI

The DOE-FTA contracts prohibited subcontracting and required that all work be performed at a DOE office at 65 Court Street, Brooklyn. In less than a year, FTA had violated both provisions. Without notifying the DOE, FTA had contracted with EC Group in June 2006 for consultants to service the DOE-FTA contract from India. This arrangement with EC Group continued with the 2009 contract.

Three months after FTA engaged the EC Consultants in India, Sevintuna and Krohe established IPS, a firm in Istanbul, Turkey, for consultants to service the DOE-FTA contract from that country. Invoices from IPS to FTA show that beginning in 2006, the services of five named consultants were billed to FTA by this Turkish company. FTA, without disclosing this arrangement or identifying IPS, then billed the DOE for the consultants, each at \$110 per hour. The monthly IPS invoices to FTA were in summary form, and did not specify the hours each consultant purportedly worked. FTA was initially billed \$14,000 in October 2006 for the services of two consultants. By January 2007, four consultants were assigned at \$30,000 per month. In October 2007, a fifth consultant was added, and the monthly bill was increased to \$50,000.

An official of the office of the Commercial Attaché of the Turkish Consulate General in New York directed an SCI investigator to the website of the Istanbul Chamber of Commerce, and provided translation assistance. The website contained a report which stated that IPS was established on September 4, 2006 with Sevintuna and Krohe as partners. Sevintuna contributed 60 percent of the initial capital, and Krohe contributed 40 percent. According to the report, IPS ceased operations on December 7, 2009. Arpaci was listed as the "liquidator."²⁴

Three notices published in the Turkish Trade Registry Gazette in Istanbul between October 25, 2007 and February 14, 2011 also identified Sevintuna and Krohe as business partners in IPS. The last of these notices announced the liquidation of IPS. An April 2007 e-mail message retrieved by SCI investigators from Sevintuna's DOE account contained an exchange of messages between Arpaci and an apparent Turkish government official. The subject appeared to be a power of attorney granted by Sevintuna concerning IPS.²⁵

²⁴ Available at <http://www.ito.org.tr/wps/portal/bilgi-bankasi?initView=true> (last visited Sept. 21, 2011).

²⁵ SCI verified this information from the Turkish Trade Registry Gazette's website and the April 2007 e-mail with translation assistance from a Turkish-speaking detective assigned to the New York City Police Department Intelligence Division. See <http://www.ticareticil.gov.tr/english/giris.php>.

In June 2007, Sevintuna and Krohe expanded the overseas servicing of the DOE-FTA contract by establishing a company, Krono, in Ankara, Turkey, as a business partnership wholly owned by Sevintuna (60 percent) and Krohe (40 percent). The company's founding and the ownership of its equity was described in a notice published in the Turkish Trade Registry Gazette on June 21, 2007.²⁶ E-mails retrieved by SCI investigators from Sevintuna's DOE account further evince that he and Krohe owned Krono.²⁷ They show that in September 2009 Krono sought to establish a bank account with an HSBC affiliate in Canada. An HSBC officer requested the signatures of Sevintuna and Krohe to open the Krono account. In September 2010, a second notice in the Turkish Trade Registry Gazette verified that Krohe and Sevintuna still owned Krono.

Without informing the DOE of their ownership of Krono, or even of the existence of this company, FTA billed the DOE for hourly services of workers employed by Krono and performed from Turkey, rather than at the DOE, as required by the DOE-FTA contracts. At the end of 2007, FTA ended its arrangement with IPS. Krono hired four IPS consultants, added 15 more, and FTA continued to bill their services to the DOE at the same rate, a minimum of \$110 per hour.²⁸ During the four-year period from June 2007 through May 2011, Sevintuna and Krohe, as the owners of Krono, paid consultants who worked in Turkey \$10 to \$14 an hour. Sevintuna and Krohe, as the owners of Krono, then charged Sevintuna and Krohe, as the owners of FTA, \$55 an hour for the consultants. Finally, Sevintuna and Krohe, as the owners of FTA, charged the DOE at least \$110 for the same \$10 to \$14 an hour consultants. At least \$6.5 million billed to the DOE during the four-year period was based on this fraud. Sevintuna and Krohe concealed and affirmatively lied about their interest in Krono. Their ownership of Krono was first described in a newspaper article appearing in the New York Daily News in April 2011.²⁹

²⁶ According to an official of the Turkish Consulate General in New York, such publication is a legal prerequisite to establishing a business.

²⁷ Sevintuna and Krohe regularly used their DOE e-mail accounts for business other than servicing the DOE-FTA contracts, as well as for personal matters. The 2005 DOE-FTA contract stated that FTA "shall not cause or allow the conduct of any other business, except for the Services and other matters connected with this Agreement, on Board property or with Board facilities, personnel, services, equipment materials and so forth." This clause also appears in the 2009 DOE-FTA contract, which added the requirement: "The Contractor shall maintain a separate office, telephone and email for any business not related to the DOE or Services hereunder."

²⁸ SCI was unable to determine the compensation paid to the IPS consultants whose services FTA billed to the DOE at \$110 per hour for a total of \$789,460. In 2007, the IPS workers transferred to Krono. In March 2011, two former IPS consultants billed to the DOE at \$110 were still employed by Krono which, at that time, paid them approximately \$12.45 per hour.

²⁹ Gonzalez, J., *Paying for a Turkish Bath at DOE*, Daily News (New York), April 13, 2011.

With two exceptions, the Krono workers' services were billed by FTA to the DOE at \$110 per hour.³⁰ Since the work for which the DOE was billed was not performed at Court Street, as required, there was no way for the DOE to verify that the invoiced work was, in fact, performed. Assuming that the work was performed by the 19 Krono workers claimed by FTA, the bills represent an approximately 100 percent markup between the invoices sent to FTA by Krono, and the invoices which FTA sent to the DOE.³¹ However, Sevintuna and Krohe owned and controlled Krono, and thus the markup between their costs and the FTA invoices to the DOE is better approximated by a comparison of the compensation paid to the Turkish workers.

Records obtained from the Turkish Ministry of Work and Social Security for March 2011 provided to SCI by a confidential informant lists the Krono employees and their compensation for that month. One Krono employee, Mustafa Cem Arpaci, was billed to the DOE for March for 184 hours at \$140 per hour. Arpaci's compensation for that month was \$18.10 per hour, representing a markup by FTA to the DOE of 673 percent. Five other Krono employees listed in the Social Security records were billed by FTA to the DOE for March 2011, also for 184 hours, at \$110 per hour. Their average compensation was \$13.62, indicating a markup by FTA of 707 percent.

For calendar year 2009, an SCI investigator analyzed the difference between FTA's billing rates for Krono consultants and their compensation, using invoices provided by Krono, Turkish Social Security records obtained from a confidential source, and messages to Sevintuna's DOE e-mail account which are described herein. In 2009, 14 Krono workers were assigned to the DOE-FTA contract. FTA billed the DOE \$140 per hour for the services of Swaroop Atre and Mustafa Cem Arpaci of Krono, which paid these workers \$23.92 and \$20.15 per hour, respectively, an approximate increase of 535 percent. The remaining 12 Krono workers were billed to the DOE at \$110 per hour. Their compensation was from \$10.68 to \$14.10 per hour, representing a markup of 680 to 929 percent.

By subpoena to a Florida bank, SCI obtained account records of businesses with which Sevintuna and Krohe were affiliated. These records further demonstrated their connection to Krono, and that they (or companies under their control) received revenue from the Turkish firm. In December 2007, there was a wire transfer from an FTA account to Krono in the amount of \$100,000.³² This was apparently the first of several

³⁰ Swaroop Atre's services were billed to the DOE at \$140 per hour during his employment at Krono (and subsequent employment at FTA). In January 2008, FTA increased the hourly rate for Mustafa Cem Arpaci of Krono, from \$110 to \$140.

³¹ Documents obtained by SCI identify 22 Krono consultants, 19 of these names appear in FTA's invoices to the DOE.

³² Sevintuna and Teresa Rendell, apparently his assistant, were authorized to draw on this account, which was established in February 2007.

transfers from FTA to the Turkish company, which totaled \$904,000 through August 2008.³³ In October 2008, \$94,000 was transferred to Krono from a Mera account at the same bank. Although Krohe ostensibly owned Mera (which is discussed elsewhere in this report), Sevintuna also had signature authority over its bank account.³⁴ In December 2009, Krono apparently wired \$124,000 to the Mera Florida bank account.

After FTA was compelled by SCI to reveal the existence of Krono, FTA continued to conceal the fact that Sevintuna and Krohe actually owned the Turkish company. Moreover, FTA, Sevintuna, and Krohe, personally and through their counsel, Gibson Dunn, affirmatively lied to the DOE, MOCS, the NYC Comptroller, the New York Daily News, and to SCI concerning Krono's ownership. In an effort to quash SCI's subpoenas seeking the testimony of Sevintuna and Krohe, Gibson Dunn represented in an affirmation submitted to the Court that Krono was owned by Cem Arpacı, a former FTA employee.³⁵

In response to SCI's request for information concerning compensation of consultants assigned to the DOE-FTA contracts, Walden wrote to SCI on May 14, 2010, stating, "[W]e do not have access to [the Krono employees'] compensation rates." At the time, Gibson Dunn represented Sevintuna and Krohe. As the owners of Krono, Sevintuna and Krohe, of course, had access to what their employees were being paid. In fact, Arpacı sent this information to Sevintuna's DOE e-mail address six months earlier. This message, subsequently retrieved by SCI investigators, was a report, in Turkish, of Krono's revenue and expenditures for calendar year 2009.³⁶ The personnel expenditures were \$325,309.52. Krono separately reported to SCI in July 2010 that it assigned 14 workers to service the DOE-FTA contract throughout 2009. These included Swaroop Atre. Invoices sent to Sevintuna's DOE e-mail address show that in 2009 Atre was paid \$4,400 per month by Krono.³⁷ Based on the hours attributed to him in FTA's invoices to the DOE, Atre's hourly compensation was \$23.92. As described above, Turkish Social Security records show that in 2009, Krono paid Mustafa Cem Arpacı \$20.15 per hour.³⁸ FTA billed the DOE \$140 per hour for services attributed to Arpacı and Atre.

³³ In December 2007, FTA also wired two payments to IPS totaling \$110,000.

³⁴ Sevintuna, Krohe and Rendell were authorized to draw on this account, which was established in August 2008.

³⁵ See Future Technology Associates, LLC, et al. v. Special Commissioner of Investigation, et al., Sup. Ct, N.Y. Co., Index No. 115054/10. As described below, after the Court quashed SCI's subpoenas, Jim Walden, a Gibson Dunn attorney, informed the Court that he subsequently became aware of contrary information about Krono's owners.

³⁶ A Turkish-speaking New York City Police Department Detective assigned to the Intelligence Division provided translation assistance. The monetary amounts in the report were expressed in U.S. dollars.

³⁷ These invoices show they were sent by Atre from Bangalore, India, and are addressed to Krono in Turkey.

³⁸ These records apparently show that Arpacı was first employed by Krono in June 2007, when Sevintuna and Krohe established the firm. Arpacı's services were then billed to the DOE by FTA at \$110 per hour, for which Krono paid him approximately \$11.63.

The remaining Krono workers were billed to the DOE at \$110 per hour. Their compensation, factored from Turkish Social Security records and the personnel expenses Arpaci e-mailed to Sevintuna, was from \$10.68 to \$14.10 per hour.³⁹ A financial report retrieved from Sevintuna's DOE e-mail account indicated that at least during 2009, the DOE was Krono's sole source of revenue. Krono's name appears on a Turkish website listing information technology companies in Ankara. The entry for Krono references only one client – the DOE.⁴⁰

Underscoring the charade of his purported independence from Krono, Sevintuna wrote to the Turkish firm requesting – rather than directing – its cooperation with SCI. In a letter to Krono dated May 12, 2010, a copy of which Gibson Dunn provided to SCI two days later to demonstrate their client's purported "cooperation" with this investigation, Sevintuna addressed Mustafa Arpaci as if he were an independent owner or executive of Krono, rather than an employee of Sevintuna and Krohe.⁴¹ The text of the letter makes it obvious that it was drafted by an attorney for Sevintuna's signature. Sevintuna's statement that he would be "grateful" if Krono were to cooperate with SCI is blunted by a recitation of reasons as to why Arpaci should not cooperate:

Our preliminary understanding is that some jurisdictions – possibly including jurisdictions in which some of your employees are based – prohibit employers from accessing their employees' files and/or disclosing their employees' confidential and/or personal information. We cannot advise you regarding your legal obligations concerning data privacy (or any other matter); we encourage you to seek the advice of local counsel in Turkey (and any other relevant jurisdiction) for such advice. But insofar as it is possible, consistent with any and all applicable laws, regulations, and other obligations, for you to cooperate with SCI's inquiry and provide documents and/or information they might request, we would be grateful if you would endeavor to do so.

If you have any questions, please contact our attorney, Jim Walden, of Gibson, Dunn & Crutcher LLP, at (212) [omitted].

³⁹ One such worker, Alp Eksiolu, was first employed by Krono in November 2007 and was paid approximately \$11.55 per hour, according to Turkish Social Security records. As of March 2011, Krono paid him \$12.20 per hour. FTA billed his services to the DOE throughout these years at \$110 per hour.

⁴⁰ See <http://www.hacettepetechnopolis.com/katilimcilar.asp> (last visited Sept. 15, 2011). The Krono business contact e-mail address in this website is to a DOE account, and the name of the contact person appears in FTA's invoices to the DOE.

⁴¹ The letter was one of four which Sevintuna sent to DOE subcontractors at SCI's request. The subcontractors were beyond SCI's subpoena jurisdiction, and FTA's counsel agreed to request that they cooperate fully with SCI's investigation.

As he did concerning Krono, Sevintuna wrote to EC Group's Michigan office at SCI's request. This letter also stated Sevintuna's "hope" that EC Group would cooperate with SCI's inquiry. It also stated – without specific authority – that "local law" (in this instance, in India) "may restrict your authority" to produce records.

EC Group's subsequent response to SCI's request included a budget concerning the three consultants based in Chennai, India assigned to FTA, but EC Group did not disclose the consultants' compensation. EC Group billed FTA (and later, its affiliate, Mera) a flat monthly fee for each of the three consultants, plus a management fee of \$1,000. Two of the consultants were billed to FTA at \$2,860, and the third at \$3,200. According to a letter to SCI by Thomas Sudyk, the president of EC Group, the consultants in Chennai worked 45 hours per week. Thus, the cost to FTA (not the consultants' compensation) was \$15.89 and \$17.78, respectively, per hour. FTA then billed the DOE \$110 per hour for each of the three consultants, an average markup of 565 percent. These margins were a clear advantage to FTA which, in 2006, paid its salaried employees in Brooklyn who were billed at the \$110 rate approximately \$55.12 per hour – more than three times FTA's cost for the consultants in India.⁴² FTA billed the DOE \$1.9 million for services of the EC Group consultants through January 2011.

On June 10, 2010, an SCI attorney wrote to Arpacı at the Krono office in Ankara at the address appearing in Sevintuna's letter to him of May 12th. SCI's letter requested documents pertaining to the DOE-FTA contracts, and was sent by regular mail, to the e-mail address at which Sevintuna had written to him, and to a fax number which appeared on Krono's invoices to FTA. Nearly two weeks passed without a reply. The SCI attorney inquired of a Gibson Dunn attorney, and was informed that "we spoke to our client and discovered that Krono has recently moved its offices" The attorney provided the new address. Contrary to Gibson Dunn's statement, Krono apparently had moved to this address not "recently," but two and one-half years earlier. A legal notice published by Krono (referencing Sevintuna and Krohe) in the Turkish Trade Registry Gazette on December 28, 2007, stated that Krono actually moved its offices that month to the new address provided to SCI by Gibson Dunn. Using this address, the SCI attorney again wrote to Arpacı.⁴³

In July 2010, an attorney in Istanbul replied by letter to SCI's inquiry, enclosing a letter apparently signed by Arpacı, who stated that the firm "is a limited liability company established under the laws of Turkey." Arpacı made no reference to Krono's

⁴² The FTA employees' compensation is based on a sampling of the IRS W-2 statements which SCI obtained by subpoena from FTA. Their reported annual salary was divided by 1,750, which was FTA's standard calculation for annual hourly billings per consultant.

⁴³ Krono's new address appeared in invoices e-mailed to Sevintuna's DOE account as early as November 2008.

ownership, but he described its relationship with FTA to misleadingly suggest that it was independent of Sevintuna:

Krono Computer Systems and FTA and/or Mera have no written contracts. The business relationship between Mr. Sevintuna and Mr. Arpaci is based on the history that is built over ten years. Mr. Arpaci has worked as part of the KPMG Consulting New York City Board of Education Mainframe Systems upgrade project between the years of 2000-2002. Mr. Arpaci, as a work colleague of Mr. Sevintuna, has gained extensive knowledge of NYCDOE mainframe systems. During his visit to United States in 2006 Mr. Arpaci heard about Mr. Sevintuna's business relationship with EC Group, he was already providing similar services to local public and private sector clients and offered to provide similar services on a very limited basis. Over the years the business relationship between the companies grew into the current business model.⁴⁴

Arpaci's claimed reasons for declining SCI's request for the hourly compensation of its workers invoiced for the DOE-FTA contracts included "signed confidentiality and employment agreements" under Turkish law, "[t]he fluctuation in exchange rates and the conditions of Commercial and Labour Laws of the Republic of Turkey [which] render it administratively improbable to provide a solid formula for hourly compensation calculation." Finally, dovetailing with Sevintuna's letter to him of May 12, Arpaci stated that under Turkish law, Krono declined to disclose its pay practices. He claimed that "[s]uch information is not even shared with FTA and / or Mera and / or our local public / private sector clients."⁴⁵ This, of course, was flatly refuted by Arpaci's December 2009 e-mail to his employer and FTA's co-owner, Sevintuna, in which Arpaci reported Krono's personnel costs for that calendar year.

Arpaci's response to SCI enclosed copies of monthly Krono invoices to FTA and Mera from November 2007 through December 2009. The first two invoices from 2007 (totaling \$350,000) were in summary form, and did not identify workers. The remaining invoices identified 17 workers by name. Each invoice listed from eight to 14 workers, but there was no specification as to the hours each person worked, his or her hourly rate, or the billed amount attributed to each worker.⁴⁶ Each of these invoices merely stated a total sum ranging from \$88,000 to \$123,000.

⁴⁴ Krono did not exist until June 2007. Arpaci was among the consultants whose names appear in earlier IPS invoices.

⁴⁵ Mera was the FTA affiliate owned by Krohe which invoiced Krono and subcontractors for services to the DOE-FTA contracts.

⁴⁶ As noted above, documents obtained by SCI identified 22 persons apparently employed by Krono; 19 of these names appeared on FTA's invoices to the DOE.

Using their law firm, FTA repeated the lie to SCI concerning Krono directly to the DOE. On June 11, 2010, Randy M. Mastro, a Gibson Dunn partner, wrote to William Joyce, the Deputy Counsel of the Commercial Unit of the DOE Office of Legal Services. The letter was a reiteration of an argument that Gibson Dunn had made in Walden's May 14th letter to SCI: That FTA did not engage in subcontracting. In his letter to Joyce, Mastro sought the DOE's written confirmation that FTA was permitted to use consultants employed by other firms under the DOE-FTA contract. Mastro's letter informed Joyce that "the third-party companies that supply [temporary contract employees] to FTA – none of which are affiliates or subsidiaries of FTA – are instead, 'employment agencies' under New York Law." Mastro's letter then referred Joyce to an enclosed copy of Walden's May 14th letter to SCI, and its attachments referencing the "third-party companies," including Krono. Walden's letter, which is described above, included the representation, "[W]e do not have access to [the Krono employees'] compensation rates," and attached Sevintuna's letter to Arpaci at Krono in Turkey, stating "insofar as it is possible" for Arpaci to cooperate with SCI's inquiry, that he would be "grateful."

As recently as April 2011, Sevintuna and Krohe continued to affirmatively deceive the DOE regarding Krono's ownership. On April 5th, Walden wrote to Juan Gonzalez at the New York Daily News and criticized the reporter's coverage of FTA and its contract with the DOE. In the section concerning consulting companies, Walden informed Gonzalez: "You asked whether any FTA principal has an ownership interest in two consulting companies – Krono or EC Group. No FTA principal has any such ownership interest." Walden added: "Krono is a Turkey-based consulting company that is owned and operated by a former employee of a Predecessor to FTA." Although not named, the description matched Arpaci.

Richard Carlo of the DOE DFO testified before SCI investigators that on the same date as Walden's letter to Gonzalez, Sevintuna approached him and handed him a copy. According to Carlo, Sevintuna said, "My attorney told me to give this to you." Carlo provided the letter to SCI.⁴⁷

Walden, as described below, later wrote to the judge who had decided the challenge to SCI's subpoenas. He acknowledged his earlier representations – that Arpaci owned Krono – are contradicted by the Turkish Trade Registry writing that identified Sevintuna and Krohe as the firm's owners. Sevintuna did not tell Carlo of this contradiction. Carlo testified that on a Friday evening four days after he received Walden's letter from Sevintuna, Krohe visited Carlo at his DOE office. According to Carlo, Krohe vaguely reported that FTA had some type of business involvement with other companies, and that Gonzalez had some information concerning subcontracting issues and a subcontractor's relationship to FTA. Krohe said that he wanted to draft a

⁴⁷ It is uncertain whether Sevintuna was referring to Walden. While Walden and Gibson Dunn represented FTA and Krohe at the time of Sevintuna's meeting with Carlo, Sevintuna had obtained separate counsel for his personal representation concerning SCI's investigation.

“letter of apology” to the DOE for having embarrassed the DOE and FTA. Carlo testified that he did not inquire of Krohe, and suggested that he discuss the matter with his attorney.

FTA’s failure to inform the DOE about Sevintuna’s and Krohe’s ownership of Krono and IPS specifically violated its contracts with the DOE. In the 2005 DOE-FTA contract, signed by Sevintuna, FTA’s affirmative obligations included “notify[ing] the Chancellor in writing within ten (10) calendar days in the event of a change in any ... (B) subsidiary and/or affiliated entities that are directly involved in the performance of this agreement; ... and (D) any relationship that might involve or create a conflict of interest.” The 2009 DOE-FTA contract contained a substantially similar provision. Since the information about Krohe’s and Sevintuna’s ownership of Krono was revealed in April 2011, SCI investigators have re-interviewed DOE officials charged with overseeing FTA’s operations. Hederman, Carlo and Giordano, who was the Chancellor’s Designee for the 2005 DOE-FTA contract, each told investigators that she or he was not informed about Krono. More than a dozen DOE employees familiar with FTA’s operations also told investigators that they had not heard of the firm. Two FTA employees assigned to work at 65 Court Street told investigators that they had not heard of Krono before they read about the company in the Daily News.

Several DOE DFO officials and employees were aware that some consultants assigned to the DOE-FTA contracts worked from Turkey. Carlo told SCI investigators that he knew of “Mustafa” (apparently Arpaci). Hederman told investigators that she participated in conference calls with workers in Turkey, including Arpaci.

In the 2009 DOE-FTA contract, Sevintuna also specifically warranted that:

[N]either [FTA] nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The contractor further represents and warrants that in the performance of this Agreement no person having such interest shall be employed by it. The Contractor, its employees, agents and subcontractors must report to the Special Commissioner of Investigation (SCI) any such interest or possible interest.

No one from FTA, including Sevintuna and Krohe, advised SCI of their interest in Krono or IPS.

As part of their effort to avoid testifying before SCI investigators, Sevintuna and Krohe, through their counsel, lied to a New York Supreme Court judge about their interest in Krono. As described herein, in November 2010, Gibson Dunn, on behalf of

FTA, Sevintuna and Krohe, brought a motion to quash SCI's testimonial subpoenas issued to Sevintuna and Krohe. Swaroop Atre, an FTA employee who was previously employed by Krono, and who was also served with an SCI subpoena, joined the motion to quash.⁴⁸

In an affirmation in support of the motion to quash submitted by attorney Jim Walden in January 2011, he attached an exhibit, a chart entitled "KRONO BILIGSAYAR [*sic*] [FTA had no written contract with Bilgisayar]." Footnote 2 of the chart, appended to the entry for Cem Arpaci, said: "Owner of Krono Bilgisayar" without further embellishment. The document listed Arpaci's location as "Turkey."

Another exhibit to the Walden affirmation contained a copy of the May 12, 2010 letter from Sevintuna to Arpaci at Krono, in Ankara, regarding cooperation with the SCI's investigation. The letter, which is described above, was dated during a period when Mr. Walden represented Sevintuna, Krohe, and FTA. The letter is written as if Sevintuna and FTA were not related to Krono.

The Walden affirmation stated that it was made on the "basis of personal knowledge, documents obtained during this representation and conversations with FTA employees." Information from Krohe, then Walden's client, and Sevintuna, his former client, presumably were the major sources for the assertions in the affirmation about the ownership of Krono. According to the Turkish Trade Registry Gazette, Sevintuna and Krohe owned the company during the pertinent events described in their lawyer's affirmation.

In March 2011, the New York County Supreme Court granted the motion which had been supported by Walden's affirmation, and quashed SCI's subpoenas to Sevintuna, Krohe and Atre. Early the following month, Walden wrote to Gonzalez of the Daily News, stating that Krono was owned by "a former employee of a predecessor of FTA," and that "No FTA principal has any such ownership interest" in Krono.⁴⁹ Gonzalez's article concerning FTA and Krono appeared in the Daily News on April 13, 2011. He reported Walden's statement that Sevintuna and Krohe did not own Krono, and of the contrary notices which were published in the Turkish Trade Registry Gazette.

⁴⁸ Atre was previously represented by Gibson Dunn in SCI's investigation, but on the day before his scheduled testimony (which had been adjourned at Gibson Dunn's request) Walden advised an SCI attorney that Atre would be retaining a new attorney. A confirming e-mail from a Gibson Dunn associate said that "in an abundance of caution, we are engaging separate counsel for Mr. Atre." The new attorney joined in Gibson Dunn's motion to quash.

⁴⁹ Sevintuna gave a copy of this letter to Carlo, who gave it to SCI. See p. 20, *supra*.

Gonzalez apparently provided these Turkish Trade Registry documents referencing Sevintuna and Krohe and their ownership of Krono to Walden. On the day before the news article appeared, Walden wrote to the Judge who had issued the decision and order quashing SCI's subpoenas. By letter to the Court, dated April 12, 2011, copied to the SCI attorney, Walden referenced his January 2011 affirmation, and exhibits. According to Walden, these exhibits contain assertions made to SCI and the DOE concerning Krono "that Krono was founded and owned by Cem Arpacı and was independent of FTA." Walden added that "the Daily News reporter, whose coverage started SCI's investigation in the first place" – meaning Juan Gonzalez – had contacted Walden "repeatedly, as his interest in FTA was apparently rekindled by the court's decision." Walden's letter continued that Gonzalez had supplied a Turkish language document "purporting to show that FTA principals Tamer Sevintuna and Jonathan Krohe own Krono. These documents contradict the aforementioned factual assertions in the exhibits to my affirmation."

Walden soon underscored the significance of this evidence that his clients had concealed their ownership of Krono, and that this revelation made FTA's position with the DOE untenable. On the day after a Daily News article reported that Sevintuna and Krohe owned Krono and referenced the documentary evidence which prompted Walden's letter to the Court, Gibson Dunn contacted a DOE attorney to initiate discussions for FTA to end its association with the DOE, even though the contract did not expire until 2012. During these discussions, the Gibson Dunn attorney suggested that the DOE keep Krohe on during the transition. While the Gibson Dunn attorney did not acknowledge any wrongdoing on the part of FTA, or former clients Sevintuna and Krohe, he asserted that SCI would make a distinction between the conduct of Sevintuna and the conduct of Krohe. That assertion was incorrect, and SCI recommended that the DOE not keep Krohe on for any period of time. The DOE accepted this recommendation, ended its contract with FTA, and ended its association with Sevintuna and Krohe. FTA's DOE contract was voided the following month as of May 31, 2011. Krohe left the DOE on that date. Soon after, Walden advised the SCI attorney that he no longer represented Krohe.

PERSONAL RELATIONSHIP BETWEEN DOE CONTRACT OFFICER HEDERMAN AND FTA PRINCIPAL KROHE

Judith Hederman, the Executive Director of the DFO, was the Chancellor's Designee and, as she testified to SCI investigators, the "owner" of the August 2009 DOE-FTA contract. Her signature appears on the contract. As such, she was the person charged by the DOE for any approvals or exceptions from the terms of the contract. In March 2010, Hederman advised Krohe by e-mail that the NYC Comptroller confirmed that the \$43.3 million contract was now registered (retroactive to August 2009).

Hederman was charged with managing FTA's work, particularly with respect to the DFO's FAMIS accounting system. She was involved in drafting the Statements of Work ("SOWs") which specified the work to be performed by FTA, the staffing of these projects by its consultants, and the work deadlines. In November 2010, Hederman testified that in the previous month, Photeine Anagnostopoulos, Deputy Chancellor for Finance and Technology, informed her that Carlo was to be the contract manager thereafter due to reorganization within the DOE.⁵⁰

Hederman was not the Chancellor's Designee in the 2005 DOE-FTA contract.⁵¹ However, as she testified, she co-authored a 17-page SOW in June 2008 which specified the work to be performed in Fiscal Year 2009 by FTA concerning the New York City Automated Payroll System ("NYCAPS"), including the number of FTA consultants to be assigned to the project. Hederman worked with FTA consultants particularly with respect to payroll matters. This is confirmed by numerous DOE e-mails in which Hederman issued directives to FTA consultants, including Krohe, concerning the Payroll Portal program.

Notwithstanding that she was the Chancellor's Designee on the 2009 DOE-FTA contract, Hederman testified that she was unaware that it required that all work was to be performed at the DOE office at 65 Court Street in Brooklyn. She said that no one had asked her for permission for consultants to work at another location.

Hederman testified that she assumed that all consultants assigned to the DOE-FTA contracts were employed by that firm. She claimed to be unaware of any subcontracting, and no one from FTA asked her for permission to subcontract for consultants.⁵²

On March 29, 2011, Marge Feinberg of the DOE Office of Communications and Media Relations forwarded to DOE officials, including Hederman, Carlo, and David Ross of the Division of Contracts and Purchasing ("DCP") a list of four "follow-up" questions by Gonzalez of the Daily News concerning FTA. SCI obtained the e-mail from the DOE soon thereafter. One of the questions was:

⁵⁰ Approximately two weeks after this November 2010 interview, Hederman wrote to Sevintuna (copying Anagnostopoulos, Carlo, and William Joyce) and advised him that as of the "early spring of 2010" the "daily activities of FTA became the responsibility of the DOE Division of Financial Systems and Business Operations (FSBO), which is under the leadership of Richard Carlo, Executive Director." Hederman provided a copy of this letter to SCI when she was called to a subsequent interview in April 2011.

⁵¹ Vincent Giordano had this designation in the 2005 contract.

⁵² Hederman testified that she understood that sometimes FTA would contract with another company to "try out" a consultant for "a couple of months" before hiring the consultant and placing him or her on the FTA payroll.

Section 21 [of the 2009 FTA-DOE contract] lists Judith Hederman of the DOE as the chancellor's designee to oversee the FTA contract. To your knowledge, does Ms. Hederman have – or has she had since the original FTA contract began in 2005 – a personal relationship (other than as a DOE supervisor) with any of the principal project managers of FTA, including Mr. Sevintuna and Mr. Jon Krohe?

No one had specifically responded to the question concerning a personal relationship. Feinberg then wrote to Carlo (copying Hederman), "Just checking, but you have no personal relationship with anyone at FTA, correct?" Carlo responded that Feinberg was correct, but Hederman did not reply. Later that afternoon, Hederman e-mailed this non-responsive message to Feinberg and Ross, copying Carlo, and the three other DOE participants in the messages:

... Although the contract lists me as the chancellor's designee on the FTA contract (when we signed in, I believe November 2009), reorganization in early 2010 shifted the function of contract owner and manager to Rich.
Thanks-
Judy

SCI investigators asked Hederman to return to SCI for further questions concerning FTA. She appeared on April 14, 2011 without counsel and was interviewed under oath. Hederman testified that she had been acquainted and worked with Sevintuna and Krohe well before she became the Chancellor's Designee in the 2009 DOE-FTA contract. When Sevintuna and Krohe were employed by KPMG and Tier, they provided services to the DOE Bureau of Contract Aid, of which Hederman was Director. She said that she also worked with Sevintuna and Krohe as a DOE Payroll Director. Asked about Krohe, Hederman said that she currently worked with him on "accounting issues," including "booking problems" concerning payroll. Hederman said that when she was promoted to Executive Director of DFO in 2009, most communications with FTA were handled by her subordinates.

Asked if she had socialized with FTA employees, Hederman testified to attending group dinners with FTA and DOE employees. She denied that she dined or socialized alone with Krohe.

Hederman was asked about the recent inquiry by Feinberg concerning personal relationships with FTA officers. Hederman initially stated that she did not recall if she responded to Feinberg's inquiry of less than a month earlier. Hederman was then shown the e-mails, and now claimed that she had not answered because she did not think the

question was applicable to her as Carlo was currently responsible for the DOE-FTA contract. She said that she had been “bothered” by the question. Asked by investigators for a specific reply to Feinberg’s question, Hederman testified that the answer to it was “No.” Hederman further denied under oath:

That she had an “intimate personal relationship with anyone from FTA;”

that anyone from FTA had ever invited her on a date;

that she had socialized or shared a meal with Krohe (outside the presence of anyone else from FTA or the DOE);

that she had visited Krohe’s home; and

that anyone from FTA had offered her money or anything of value.

Asked if she had travelled on business or for other purposes with anyone from FTA, Hederman specified a few instances in which she was part of a group of DOE and FTA employees (which usually included Krohe). She gave a similar response when asked about dinners.

Hederman expressed pique at the investigators’ questions, stating that “I don’t know where this is leading to,” and “I’m happily married.”

Four days after Hederman’s testimony, an attorney representing her telephoned the assigned SCI attorney and stated that Hederman was seeking to retract any statements she may have made about whether she had a personal relationship with Krohe, and that those statements should not be relied upon. Soon after Hederman’s attorney apprised SCI of this, Commissioner Condon contacted the DOE General Counsel and recommended that Hederman be removed from any involvement concerning FTA. The DOE accepted this recommendation.

The attorney was asked to produce Hederman so that she could retract these statements under oath and correct the record. SCI permitted Hederman’s attorney to listen to the recording of her client’s testimony in advance of her return to SCI.

Hederman, accompanied by her attorney, returned to SCI, and was again placed under oath. However, she declined to retract her prior testimony. An SCI attorney read from Hederman’s prior testimony the questions and her responses concerning a personal relationship with anyone from FTA, and Krohe in particular. As to each exchange,

Hederman was asked if she gave the previously recorded response, and whether the response was true. Hederman invoked the Fifth Amendment privilege against self-incrimination to each question.

SCI investigators also asked Hederman further questions concerning FTA and Krohe, some of which were prompted by further review of her DOE e-mail messages. These questions included the following:

Did you ever share with Jon Krohe any communications from DOE officials that ... were not intended to be shared with FTA?

Did you ever give any information to Mr. Krohe that you understood was to be held strictly by employees of the DOE and not to be shared with any vendor, including FTA?

To each of these questions, Hederman did not give a substantive response, but again asserted the Fifth Amendment privilege against self-incrimination.

On May 3, 2011, the day after Hederman asserted the Fifth Amendment privilege when asked whether she had shared internal DOE information with Krohe, Commissioner Condon wrote to the DOE General Counsel and apprised him of this matter for his review and appropriate action. The following day, Hederman was offered and took the opportunity to resign from the DOE.

Hederman shared internal DOE communications with Krohe

The questions to Hederman regarding DOE communications and Krohe were prompted by the discovery of a chain of internal DOE e-mails from January 2008, which indicate that Hederman shared them with Krohe. The first of these messages was from Kathleen Grimm, the Deputy Chancellor for the Division of Operations. She wrote the following to Vincent Giordano, the Executive Director of the DFO, and David Ross, the Executive Director of the DCP on January 17th at 11:17 a.m.:

We are doing a review of FTA expenditures. We are seeing a doubling of them in 08 for FAMIS and the Web portal. We are seeing even larger growth in the FMS/3 and NYCAPs spends on the DOE side of the ledger. I need a report that gives a status on each of these projects, their costs, both City and DOE spend (prior spends, current year and three year projection). How long will you need?
Thanks.⁵³

⁵³ Grimm copied her message to her Chief of Staff Jeffrey Shear, Deputy Chief of Staff Stephanie Keating, and to DOE Division of Budget Operations and Review Executive Director Susan Olds.

On the same morning, Giordano forwarded Grimm's message to Maria Conklin of DFO (and copying Harvey Schoenfeld, also of DFO) with the directive: "Please work with Harvey and get these numbers for me." Conklin forwarded these messages to Hederman and Schoenfeld with a request for their assistance. Thereafter, these DOE executives exchanged messages regarding Grimm's request. Giordano wrote to Conklin, "We need to know how much is paid to FTA in total." He included a template for a chart in which to state the payments (and anticipated payments) to FTA for four specified categories of services for fiscal years 2006 through 2008. Underneath the template, Giordano added: "Also, project out next 3 years."

Conklin forwarded all the preceding messages to Hederman and Schoenfeld with her own message at 4:46 p.m. No one from FTA, and no one aside from the DOE executives had been copied on the messages. In an interview with SCI investigators, Giordano confirmed that they were not to be shared with FTA, or with anyone other than the DOE executives.

An examination of Krohe's DOE e-mail account revealed that the same minute that Hederman received this message from Conklin (which included Grimm's directive and all of the preceding messages), she forwarded the exchange only to Krohe with the message: "For your eyes only. Thanks, Judith."

After Hederman's resignation, SCI investigators obtained e-mails from her DOE account and the DOE BlackBerry device which had been issued to her. A review of Hederman's DOE e-mails showed further instances in which Hederman shared with Krohe internal DOE information concerning FTA.⁵⁴ In September 2006, Hederman and five other DOE executives discussed by e-mail whether FTA could provide certain services under the current DOE-FTA contract, or if alternative arrangements should be made. In a final message to the DOE executives, Jason Henry, the Chief Administrator of DCP, requested an overview, with clarification of whether the proposed work "is allowable with the existing scope of services in the current DOE contract." No one from outside the DOE was included in the message.

Eleven minutes after Henry transmitted this message to the DOE executives, Hederman forwarded it (with the preceding string) to Krohe's personal "Gmail" account. She wrote to Krohe: "The jerk got involved. ... Pls don't ask anyone to talk to him. We will take care of this." According to James McBride of the DOE DCP, the matter was

⁵⁴ As stated in this report, Hederman asserted the Fifth Amendment privilege in response to questions concerning her relationship with Krohe. She asserted the privilege in response to all of SCI's substantive questions. Krohe also asserted the privilege in response to all substantive questions, including those regarding his relationship with Hederman. Concerning the e-mails described herein, it is implicit that Hederman and Krohe (and not others) wrote and transmitted the messages to and from the e-mail accounts bearing their names.

subsequently resolved, and FTA was permitted to provide the services under its DOE contract.

In August 2009, Carlo e-mailed another DOE official, copying Hederman and George Raab, then the DOE Chief Financial Officer. Carlo discussed a review of all current FTA projects and a meeting with the Corporation Counsel concerning the DOE-FTA contract scheduled for the following day. Hederman forwarded the message to Krohe 30 minutes after Carlo sent it to her.

In September 2009, Hederman shared with Krohe another internal DOE e-mail string concerning FTA. Apparently acting in response to a request by a member of the DOE Panel on Educational Policy, Deputy Chancellor Anagnostopoulos requested information about the cost to maintain the DOE financial system in the future. She specifically asked for the “difference in the costs between consultants and” full-time equivalents. Giordano forwarded these messages to Carlo and Hederman. Hederman sent the e-mails to Krohe 12 minutes later.

In August 2010, Hederman was part of an e-mail discussion of proposed personnel changes at the DFO concerning four persons who were identified in the e-mails. In the exchange, Hederman apparently scolded a subordinate for discussing the matter “outside” the DFO. She forwarded these messages to Carlo, who affirmed in a reply that human resources matters should only be discussed among specific DOE officials. Hederman, seemingly oblivious to her own instructions and those of her supervisor, forwarded all of these messages to Krohe the next day. That same month, Hederman forwarded to Krohe another internal e-mail exchange she had with Carlo concerning a DFO personnel change.

Hederman’s relationship with Krohe

Hederman’s assertion of the Fifth Amendment privilege after initially denying a personal relationship with Krohe prompted further review of their DOE e-mails, and of telephone billing records obtained by subpoena. These records contained information evincing a close personal relationship between them. Krohe also invoked the Fifth Amendment when asked about their relationship, and about some of the matters described below.

Billing records for a home telephone subscribed to by Krohe indicate that it was used to contact a certain mobile telephone 144 times between January 2006 and April 2007. Nearly all of these calls were placed after 8:00 p.m. In May 2011, an SCI investigator dialed the mobile telephone number, and received a voicemail prompt in a

female's voice which stated that the caller had reached Judith Hederman's phone. Billing records obtained by subpoena confirmed that she was the subscriber. Records for this phone and for a mobile phone subscribed to by Krohe (which were also obtained by subpoena) show that from July 2008 through May 2011, there were more than 5,000 contacts between these phones. From April 2006 through February 2011, a number of messages from Krohe appear in Hederman's DOE e-mail account indicating that they utilized the BlackBerry instant message service. Some of these messages were in the late evening. Messages from Hederman's DOE e-mail account to Krohe's personal and DOE accounts from 2006 further evinced a relationship.

One indication of the relationship between Hederman and Krohe occurred in July 2008. On a Saturday evening, Krohe forwarded to Hederman an e-mailed hotel room confirmation for the following weekend at the Mandarin Oriental Hotel in Washington, D.C. It stated that Krohe had booked one room for two adults for three nights for a total charge of \$1,471.⁵⁵ In a separate e-mail sent immediately after the hotel confirmation, Krohe sent Hederman an Amtrak confirmation for two business class tickets on the Acela from New York to Washington on the dates coinciding with the hotel booking. Krohe's and Hederman's names appear in the passenger information section of the Amtrak confirmation.⁵⁶

There were numerous contacts between Krohe's and Hederman's mobile phones in the days and hours leading to her April 14, 2011 SCI interview. Billing records show that on that date, there were 39 contacts between their phones before the interview (the last of these was approximately 20 minutes before the interview commenced). Approximately 20 minutes after the interview concluded, the contacts resumed; there were 127 contacts between the phones through the end of the day.

FALSE DECLARATIONS IN VENDEX QUESTIONNAIRES AND ASSOCIATED DOCUMENTS

As a DOE vendor, FTA, and Sevintuna and Krohe, were required to submit VENDEX questionnaires.⁵⁷ None of the completed questionnaires certified by Sevintuna on behalf of FTA and of himself, or by Krohe (on behalf of himself as an FTA principal)

⁵⁵ The reservation indicated that it was guaranteed by Krohe's credit card.

⁵⁶ The total rail fare billed to Krohe's credit card was \$690.

⁵⁷ VENDEX is a certified questionnaire required by the City Charter and City procurement rules. Vendors under consideration for award of contracts must have complete VENDEX questionnaires for their organization and principals on file. The completed questionnaires assist City agencies in reaching a responsibility determination. If any of the information has changed since the prior filing, the vendor must submit "changed questionnaires." If no information has changed since the prior filing, the vendor must submit a "certificate of no change."

in connection with the DOE-FTA contracts disclosed their ownership of Krono or IPS. The certification page of these questionnaires contains the warning that:

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING VENDOR NON-RESPONSIBLE WITH RESPECT TO THE VENDEX SUBMISSION AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

(Emphasis in original).

Among the specific certifications sworn to in the VENDEXes is the statement that the submitting principal has “supplied full and complete responses to each item therein to the best of my knowledge and belief.” In his initial VENDEX filing in April 2006 on behalf of himself as principal of FTA, Sevintuna checked “No” in response to the question: “Within the past three (3) years have you been a principal owner or officer of any entity other than the submitting vendor?” In the accompanying vendor questionnaire for FTA, Sevintuna also checked “No” to the questions, “Does the submitting vendor control one or more entities?” and “Does the submitting vendor have one or more affiliates, and/or is it a subsidiary of, and controlled by any other entity?” Krohe did not file a principal VENDEX in connection with the DOE-FTA contracts until May 20, 2010. In it, he also denied having been a principal owner or officer of any other entity within the past three years.

Sevintuna, on behalf of FTA and of himself as a principal of the company, filed periodic certified declarations that there were no changes from the time of the April 2006 FTA and principal VENDEX filings. He also filed new VENDEXes, as required, in March 2009 and May 20, 2010. In none of these documents did Sevintuna disclose that since the April 2006 VENDEXes, he became an owner (or that FTA became an affiliate) of IPS, Krono or Mera, which were directly involved in the DOE-FTA contracts.

Two weeks before filing his first VENDEX, Krohe was personally served at 65 Court Street with an SCI subpoena addressed to Mera which demanded certain records of that company. He told the investigator who served the subpoena that his attorneys would handle the matter. Krohe’s attorneys at the time, Gibson Dunn, subsequently provided SCI with records in response to the Mera subpoena. Despite this, Krohe did not disclose his ownership of Mera, Krono, or IPS in his May 2010 VENDEX.

In May 2010, an official of the NYC Comptroller assigned to confirm “vendor integrity” requested that the DOE explain why certain apparent affiliates of FTA were not disclosed in its VENDEXes dated March 27, 2009 which were signed and certified by Sevintuna. In January 2010, Sevintuna again certified as to the accuracy of these

VENDEXes by filing a “Certificate of No Change.”⁵⁸ The official specifically referenced three companies with which Sevintuna was affiliated: ARPA Consulting, Inc. (“ARPA”), RESKTA, LLC, (“RESKTA”) and FAMKRO, LLC (“FAMKRO”).⁵⁹

Ibrahim Rehawi of the DOE DCP, who was assigned to handle the NYC Comptroller’s inquiry, contacted Sevintuna and advised him of it. Sevintuna, through FTA’s attorney, gave false information in response. Sevintuna e-mailed Rehawi (copying Krohe) a June 3, 2010 letter written by FTA’s counsel, Jim Walden, of Gibson Dunn. Addressing Rehawi concerning FTA’s March 2009 VENDEX, Walden wrote: “[Y]ou questioned whether FTA disclosed all affiliated companies. It did.” Walden’s letter described other companies referenced by the NYC Comptroller (which, he claimed, had no relation to FTA), including ARPA, FAMKRO, and RESKTA, but he made no mention of Krono or IPS, firms directly involved in servicing the DOE-FTA contracts, which were owned by FTA’s principals.

SCI investigators interviewed Rehawi under oath, and he produced e-mails which comported with his testimony. Rehawi forwarded Walden’s letter to the NYC Comptroller, where it was deemed to be unsatisfactory. Rehawi was advised by an official from that office that the DOE-FTA contract was rejected for registration because the information in Walden’s letter was still contradicted by Sevintuna’s March 2009 VENDEX, in which he declared that he had no affiliates.

The DOE informed Krohe of the NYC Comptroller’s response. On June 14th, Rehawi transmitted to Krohe a string of e-mails on the matter, which included the request from the NYC Comptroller for an explanation and justification as to why the FTA VENDEXes did not disclose their affiliates. Krohe apparently shared this with Sevintuna, who, on the following day, wrote to Jason Henry, the Chief Administrator of DCP, and James McBride of that office. Sevintuna apologized for “our confusion,” stating that “When my admin filled out the Vendex form in March 2009, we did not think through question #5 of the principal owner questionnaire. Jon Krohe and I had an unrelated business (which is not connected to FTA), Reskta.”⁶⁰ Sevintuna further explained that Krohe now owned Reskta, but acknowledged that it should have been

⁵⁸ In the January 2010 document, Sevintuna specifically declared that the vendor and principal VENDEXes he filed in March 2009 continued “to the best of my knowledge to be full, complete and accurate.” The form declaration contains a warning that “a materially false statement willfully or fraudulently made in connection with this certification may subject the person making the false statement to criminal charges.”

⁵⁹ These FTA affiliates are discussed below.

⁶⁰ RESKTA is described below.

disclosed in Sevintuna's Principal VENDEX. Finally, Sevintuna wrote, "To avoid any further confusion, I am also listed as a director (not an officer) in Arpa Consulting, Inc., a business which never got off the ground."⁶¹ Sevintuna made no mention of IPS, Krono or Mera.

Cheryl Kaplan of the DOE DCP, was interviewed under oath by SCI investigators. In June 2010, Rehawi asked Kaplan to assist him after the NYC Comptroller rejected the registration of the DOE-FTA contract. Kaplan told investigators that she examined FTA's March 2009 and May 2010 VENDEXes filed by Sevintuna (for FTA and as a principal of the company), and the May 2010 VENDEX filed by Krohe (his first, as an FTA principal). She produced contemporaneous e-mails concerning this task.

Kaplan wrote to Rehawi and described inconsistencies and ambiguities regarding the questionnaires. Neither the 2009 nor 2010 filings referenced Krono, Mera, or any of the firms which the NYC Comptroller inquired about, but for RESKTA, which first appeared in Sevintuna's May 2010 Principal VENDEX. In the 2009 form, Sevintuna indicated that he owned 100 percent of FTA. In May 2010, he declared that he owned 60 percent of the firm. Krohe's VENDEX – filed the same date as Sevintuna's – left unanswered the inquiry whether he owned "ten (10) percent or greater ownership in" FTA. However, in another part of the form, he declared that he owned 40 percent of FTA. This was inconsistent with FTA's VENDEX signed by Sevintuna and bearing the same date, in which Krohe was not listed as an owner. Instead, a response to another question stated that Krohe held a right to acquire equity in FTA in the next three years which would make him an owner of 40 percent of the company.

At Rehawi's request, in June 2010, Kaplan met with Sevintuna and instructed him on the VENDEX requirements. Kaplan testified that she specifically informed Sevintuna that any entity of which he or Krohe – separately or in combination – owned 10 percent or more must be disclosed in the VENDEXes. Later that month, apparently in response, Sevintuna and Krohe filed new VENDEX reports concerning the DOE-FTA contracts, and again lied about their ownership of Krono and IPS.⁶² The certified VENDEX filings submitted by Sevintuna on behalf of FTA and of himself as a principal of the company,

⁶¹ ARPA is also described herein. Contrary to Sevintuna's message to Henry, an ARPA income statement dated September 30, 2009 which SCI investigators retrieved from Sevintuna's DOE e-mail account indicated that ARPA was well "off the ground" at that time. It had \$268,395 in revenues for the first nine months of that year. ARPA apparently was involved with FTA's services to the DOE. ARPA wired money to Arpac, and ARPA's bank account regularly received money transfers from FTA and Mera.

⁶² Krohe's VENDEX disclosed – for the first time – that he owned Mera from August 2008 through May, 28, 2010.

and by Krohe as a principal, dated June 25, 2010, again made no mention of the Turkish firms which they had co-owned for at least three years, and which were directly involved in the DOE-FTA contracts.⁶³

Walden's June 2010 letter to Rehawi also did not disclose another FTA affiliate, Mera. This firm, while ostensibly owned by Krohe, was established at Sevintuna's direction in 2008. Mera was invoiced by four of FTA's subcontractors for their work on the DOE-FTA contracts: Krono, EC Group, Quantanomics, and Modis. At the same time, FTA paid millions to Mera for unspecified "Consulting & Professional Services, Project Management." Gibson Dunn represented Mera in SCI's investigation at the time of Walden's letter, as he acknowledged in a letter to SCI three weeks earlier. Krohe filed a certificate dissolving Mera less than a week before his company's attorney's letter to Rehawi.

Two months after FTA's belated, incomplete and untrue letter to the DOE DCP and revised VENDEX submissions, Sevintuna and his company reverted to form in a similar certified questionnaire filed with the OGS. As an OGS vendor, FTA was required to file a completed New York State Vendor Responsibility Questionnaire, and did so on August 24, 2010. It bore Sevintuna's notarized apparent signature under a certification that the responses are true, accurate and complete, and an acknowledgement that the intentional submission of false or misleading information may constitute a misdemeanor or felony. He checked "No" in response to the question of whether FTA had any "Associated Entities."⁶⁴ Notwithstanding SCI's active investigation of FTA, of which Sevintuna was well aware, and for which the company and its principals had counsel, Sevintuna checked "No" to multiple questions concerning investigations. These included whether FTA was "the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct." (Emphasis in original).

Gibson Dunn transmitted FTA's lie concerning Krono's ownership to SCI as well. SCI had specifically requested information from FTA's counsel concerning the company's subcontractors. On April 20, 2010, soon after Gibson Dunn announced that they were FTA's counsel, the law firm sent SCI a binder of information it prepared concerning six "SCI Selected Subcontractors," including Krono. The entry titled,

⁶³ The June 2010 VENDEX disclosure of Krohe's interest in FTA may be belated by two years. An e-mail which SCI investigators obtained from Sevintuna's DOE account attached an unsigned "Mutual Confidentially Agreement" between Sevintuna and Krohe dated July 1, 2008. Contrary to Sevintuna's prior (and subsequent) declarations, the agreement states, that "Krohe and Sevintuna collectively own 100% of the issued and outstanding membership interest in" FTA.

⁶⁴ The instructions to the OGS Questionnaire define "Associated Entity" as including "any business entity or organized group of principal owners or officers holding 50% or greater ownership interest in the Reporting Entity," in this instance, FTA.

“Background Information on Krono Bilgisayer” included the statement: “FTA has no written contract with Krono Bilgisayer. The owner, Mustafa Arpacı was a former colleague of Tamer Sevintuna’s at KPMG.”

MERA CONSULTING, LLC

SCI’s examination of invoices showed that beginning in July 2008, Mera was billed by four subcontracting firms – Krono, EC Group, Modis and Quantanomics – for the services of consultants previously billed to FTA for work on its DOE contract.⁶⁵ Mera was not referenced in the DOE-FTA contracts and, as with the subcontracting firms, the DOE officials responsible for and knowledgeable about FTA testified that they had not heard of Mera.

In their first meeting with Gibson Dunn attorneys in April 2010, SCI investigators inquired about Mera. FTA’s counsel replied that it was not relevant to SCI’s investigation. That proved to be untrue. The attorneys subsequently provided a certificate from the Florida Secretary of State which merely indicated that Mera filed articles of incorporation with that office as a limited liability company on August 11, 2008. Randy Miller, the attorney who represented FTA in its negotiations with the DOE for FTA’s 2009 contract was identified on the document as the registered agent. However, the certificate did not identify the members or shareholders of Mera.

In an August 2008 e-mail retrieved from Sevintuna’s DOE account, Sevintuna directed Miller to establish Mera as an “S-corp. LLC,... so it can pay salaries.”⁶⁶ Although the instructions were from Sevintuna, he told the attorney that Krohe was “to be the 100 percent owner” of Mera.

Mera’s address was the same Florida street address used by FTA (albeit, with a different “suite” number). An SCI investigator determined that the street address was a UPS store, and placed a telephone call to the number listed for the UPS store. The person (who identified himself) who answered confirmed that the UPS store is the sole occupant at the address, and that mailboxes and mail forwarding are among the services offered by the store.

The website of the Florida Secretary of State was subsequently examined by an SCI investigator. Filings on behalf of Mera in April 2009 and April 2010 contain the

⁶⁵ Krono’s first invoice to Mera actually pre-dates the founding of the company by eleven days.

⁶⁶ An “S-corp.,” for federal income tax purposes, is a corporation (here, an “LLC” or Limited Liability Company) that elects to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. 26 U.S.C. § 1361. As noted elsewhere in this report, Sevintuna and Krohe regularly used their DOE e-mail accounts for business unrelated to servicing the DOE-FTA contracts. This was explicitly prohibited by the contracts.

purported electronic signature of Jonathan Krohe, who is identified as the “managing member” of the company. A May 2010 filing with Krohe’s purported signature states that he was the “sole member” of the company.

Positioned between FTA, the DOE vendor, and the firms delivering the contracted services, Mera could be construed as a prohibited subcontractor. Sevintuna was specifically alerted to this by Miller, FTA’s attorney. While negotiating the terms of the 2009 DOE-FTA contract in November 2009, Miller wrote to Sevintuna in an e-mail to his DOE account which was retrieved by SCI investigators:

Tamer, is FTA going to continue to pay Mera? I believe that the BOE may take the position that there should have been a written contract between FTA and Mera that was approved by the BOE. I know that Mera is an affiliate, so to speak, of FTA, but the BOE could take the position that Mera is a sub-contractor since it is a separate entity. Is this something that you are going to discuss with the BOE?
Randy

Sevintuna’s DOE account did not show a reply message.

Aside from a belated VENDEX filing, neither Krohe nor FTA ever disclosed the existence of this affiliate through which millions of dollars of DOE payments flowed. Notwithstanding Gibson Dunn’s representation that Mera was Krohe’s firm, it was established at Sevintuna’s direction. Records obtained by SCI by subpoena show that Sevintuna – in addition to Krohe and Teresa Rendell – was a signatory to three Mera bank accounts established in Florida in August 2008 and July 2009.⁶⁷ The Mera checking account was established with a \$550,000 transfer from an FTA account at the same bank. Mera continued to receive transfers from FTA, approximately monthly, averaging nearly \$489,000. The Mera account showed regular wire transfers to Krono (and other transfers marked “Ankara”). Checks from the account went to the remaining three FTA subcontractors on a regular basis in payment of invoices for consultants on the DOE-FTA contracts.

In August and September 2009, a total of \$1.3 million was paid from Mera’s account to FTA’s in four transfers. RESKA, FAMKRO and ARPA – three other business affiliates initially hidden by Sevintuna and Krohe – also received substantial five-figure sums from the Mera account.

FTA (and some of its other affiliates) also established bank accounts with HSBC. Subpoenaed records that SCI obtained from HSBC, show that from July 2009 through Mera’s dissolution the following May, FTA paid the company \$4.9 million.

⁶⁷ Rendell was apparently employed by Sevintuna and Krohe as an assistant. She was based in Florida, and communicated with her employers using their DOE e-mail addresses.

In September 2010, Mera's checking account activity essentially came to an end after a series of transfers totaling \$2.7 million were made to a personal account in Krohe's name at the Florida bank. Notably, Sevintuna had signature authority on this account. The previous June, he directed the bank to transfer from another Mera account approximately the same amount of money, again to Krohe's personal account.

The banking records contradict Gibson Dunn's assertion that Mera was not relevant to SCI's investigation and make clear that Mera was deeply involved in FTA's operations, and particularly so with respect to the DOE-FTA contracts. Nothing in Mera's banking records indicates that it had other clients or business operations.

Records obtained from the City Department of Finance show that since 2005, FTA has been assessed and has paid City General Corporate Income Tax. Mera, which received more than \$14 million from FTA, paid no such tax. According to an employee of the City Department of Finance, as of December 16, 2010, there was no record of any City tax filings by Mera or by any entity using its assigned Employer Identification Number.

OTHER UNDISCLOSED FTA AFFILIATES

In addition to Mera, Krono and IPS, FTA and its principals failed to disclose, as required, three other affiliated companies: ARPA, RESKTA and FAMKRO. As described above, an official of the NYC Comptroller discovered these FTA affiliates, and in May 2010, requested that the DOE explain why they were not disclosed in the company's VENDEXes. Accordingly, the DCP inquired of Sevintuna, and he – through FTA's attorney – gave false information and otherwise dissembled in his response. In June 2010, Sevintuna e-mailed to the DCP (copying Krohe) a letter written by FTA's counsel, Jim Walden, of Gibson Dunn, who claimed that FTA disclosed all affiliated companies. Walden's letter described ARPA, FAMKRO, and RESKTA, all of which, he claimed, had no relationship to FTA.

Walden's response concerning the three firms inquired about was, at best, misleading. Banking records and e-mails from Sevintuna's and Krohe's DOE accounts showed regular transactions by the three firms with FTA, Mera, Krono and its principals, and with Krono and its manager, Arpaci.

ARPA was established in September 2008 with Sevintuna as its sole director. He remained listed as such in ARPA's most recent annual report filed in March 2011. Sevintuna was a signatory on ARPA's bank accounts, which regularly received large transfers from FTA's and Mera's accounts at the same bank. Through May 2011, there

were approximately 39 regular wire transfers from ARPA to Arpaci, Krono's manager, in five-figure sums. Money from the ARPA account was also transferred to FTA, and ARPA also received four checks totaling \$166,000 from FTA.

Despite this, Walden described ARPA as an "unrelated company" to FTA, and stated that "Sevintuna does not draw any income or make any managerial decision for ARPA. ARPA does not provide any work or services under a DOE or New York City contract. ARPA has never provided any services to FTA."

As to RESKTA and FAMKRO, Walden's letter claimed that they were "wholly owned by Krohe." He stated that:

RESKTA was originally jointly-owned by Sevintuna and Krohe until Sevintuna conveyed his ownership in satisfaction of a debt in January 2008. RESKTA has been inactive since August 2008 after its assets were assumed by FAMKRO. Neither FAMKRO nor RESKTA have ever provided any work or services under a DOE or New York City contract.

SCI determined that RESKTA was established in Florida in April 2007. An (unsigned) RESKTA operating agreement transmitted that month on their DOE e-mail accounts identified Sevintuna and Krohe as members with equal ownership interest in the firm. They are identified as "Managing Members/Managers" of the firm in annual reports filed with the Florida Secretary of State through March 2011. According to bank records, Sevintuna was the sole signatory at the time the RESKTA account was established, and remained so through at least May 2011. From September 2007 through January 2008, approximately \$220,000 was transferred from FTA's account to the RESKTA account. Despite Walden's representations, nothing in RESKTA's bank records suggests that Sevintuna transferred ownership of his share of the company to Krohe in January 2008. Sevintuna's signature appeared on the firm's checks more than six months later, and he continued to direct the operations of RESKTA more than a year after (according to Walden) he gave his share of the company to Krohe.

In January 2009, attorney Miller e-mailed to Sevintuna's DOE address two draft leases which he had requested. The leases were for two condominium apartments in Brooklyn. RESKTA was identified as the landlord in the two-year leases which were to commence in February 2009. Krono was identified as the tenant, further evincing the intertwined businesses of FTA's principals. In April 2009, RESKTA transferred these condominiums to FAMKRO.⁶⁸ Krohe appeared as the seller and buyer in these transfers in the database of the New York City Department of Finance.

⁶⁸ This transaction contradicts Gibson Dunn's June 2010 letter to DCP which claimed that "RESKTA has been inactive since August 2008 after its assets were assumed by FAMKRO."

FAMKRO was established in Florida in March 2009.⁶⁹ Sevintuna's DOE e-mail account showed that, as with Mera, FAMKRO was established per Sevintuna's direction to Miller, even though Krohe was the nominal owner of the firm. Krohe was identified as the manager of the company in annual reports to the Florida Secretary of State through March 2011.⁷⁰ Account records from HSBC showed that in addition to Krohe, Sevintuna and Rendell had signature authority over its accounts. FAMKRO's HSBC account received regular wire transfers from Krono, ARPA, Mera and FTA. There were monthly transfers from Krono approximating the rent stated in the leases sent to Sevintuna for the two condominium apartments described above. A February 2010 FAMKRO check to Mera for \$150,000 contains the notation, "loan." In October 2010, FAMKRO received \$1.3 million in two transfers from FTA. During the same month, more than \$1.63 million was withdrawn from the account per Sevintuna's direction. Of the cancelled checks obtained by SCI, all appear to have been signed by Rendell – none by Krohe, the owner of the company. As with RESKTA, FAMKRO's account was used to pay condominium fees and associated expenses, including for Sevintuna's and Krohe's residences.

Sevintuna and Krohe regularly used DOE resources to conduct their private business – another violation of the DOE-FTA contracts. Apparently, neither FTA nor its affiliated companies (in the United States) maintained business offices, and instead used private mailboxes as their stated addresses. Sevintuna and Krohe were provided with free offices and DOE e-mail addresses to service the DOE-FTA contracts. Numerous messages retrieved from their DOE e-mail accounts showed that they regularly communicated during business hours concerning the transactions of RESKTA, FAMKRO, ARPA and the other businesses described herein.

KROHE'S UNEXPLAINED \$74,000 IN CLIENT ENTERTAINMENT EXPENSES WHEN DOE WAS APPARENTLY SOLE CLIENT

Krohe's DOE e-mail account examined by SCI investigators revealed that from December 2008 through December 2009, Krohe e-mailed to Sevintuna monthly expense account spreadsheets stating dates and corresponding expenses for dinners and lunches with unnamed clients and "client entertainment."⁷¹ Krohe's claims for these client meals and entertainment for 12 months totaled more than \$74,000.⁷² The "engagement" listed for each event was "Web Development," a term used consistently by FTA in invoices to

⁶⁹ *Id.* Contrary to Gibson Dunn's claim, FAMKRO was not in existence in 2008.

⁷⁰ In his e-mailed instructions to Miller, Sevintuna proposed that he (Sevintuna) be listed as a manager of FAMKRO, but he does not appear in the company's Florida filings.

⁷¹ The spreadsheets did not identify the restaurants or venue of these events, nor were there attached receipts.

⁷² SCI did not discover any evidence that these expenses were submitted to the DOE for reimbursement.

the DOE. SCI investigators asked DOE and FTA employees if they were aware of other FTA clients during this period; none were. Eleven of the client dinners claimed by Krohe cost more than \$1,000; one such meal was over \$3,000. The “Web Development” client expenses included ticket subscriptions to the New York Mets and the Tampa Bay Buccaneers. Hederman, Giordano, Carlo and other DOE officials who dined with Krohe testified that they paid cash to Krohe or Sevintuna to reimburse their own portion of the meal tabs. When SCI investigators asked Krohe and Sevintuna if they provided anything of value to a public servant in connection with the DOE-FTA contracts, each asserted the Fifth Amendment privilege.

FTA FAILED TO COOPERATE WITH SCI'S INVESTIGATION AND, THROUGH COUNSEL, DECEIVED SCI, THE DOE AND THE COURT ON MATERIAL ISSUES.

In September 2010, SCI first scheduled (through Gibson Dunn) Sevintuna's and Krohe's testimony in accordance with FTA's contractual obligation. In May 2011, the revelation of their ownership of Krono and their deceptions in concealing it forced their abrupt departure from the DOE. In the intervening months, Sevintuna's and Krohe's attorneys repeatedly postponed their interviews, and then engaged in lengthy litigation to prevent their testimony. This delay was remunerative to Sevintuna and Krohe. From October to May, FTA received approximately \$10.5 million from the DOE.

CONCLUSION AND RECOMMENDATIONS

SCI has concluded that FTA lied about its qualifications to be awarded the 2005 contract with the DOE. FTA then violated the terms of that contract and of the 2009 contract. FTA and its owners, Sevintuna and Krohe, engaged in prohibited subcontracting with consultants and ignored the requirement that consultants work on-site at a DOE facility. They obtained remote access to secure DOE websites by disguising the need for such access. They set up a company, Krono, in Turkey, in order to bill themselves at a rate commensurate with what the consultants at the DOE facility were being paid, even though the consultants in Turkey were being paid at least 500 percent less. SCI estimates that this fraud cost the DOE more than \$6.5 million. In addition, FTA billed the DOE approximately \$2.7 million for other overseas consultants. Sevintuna and Krohe, personally and through their attorneys, lied about their ownership of Krono to the DOE, MOCS, SCI, the NYC Comptroller, the New York State OGS, a New York State Supreme Court Judge, and the New York Daily News. They also falsely denied their affiliation with at least four other companies that were related to FTA. When questioned under oath, they asserted the Fifth Amendment to every question.

It is the recommendation of this office that Tamer Sevintuna, Jonathan Krohe, Mustafa Cem Arpacı, Swaroop Atre, Kabir Rekhi, and any company associated with these individuals, be made ineligible for work with the DOE and that this matter be considered should they attempt to do business or seek employment with the DOE in the future.

SCI has concluded that Judith Hederman, a high-level official in the DFO, who had significant oversight concerning the 2005 DOE-FTA contract and was the Chancellor's Designee to oversee FTA's 2009 DOE contract, materially assisted FTA by providing Krohe with information about the DOE's concerns regarding FTA and about possible steps the DOE might take concerning the FTA contract. Hederman first lied to SCI investigators when questioned under oath and then asserted the Fifth Amendment.

It is the recommendation of this office that Judith Hederman be made ineligible for work with the DOE and that this matter be considered should she apply for any position in the New York City school system or with one of its vendors, in the future.

SCI has concluded that the DOE officials charged with overseeing the DOE contract with FTA failed in that responsibility. They claimed not to know of the prohibition against subcontracting or not to know of any subcontractors. They claimed not to know that the consultants were required to work at the DOE facility. They claimed not to know that the remote access to secure DOE websites was from overseas locations. They claimed not to know of any subcontractors working from Turkey or India although they had contact with consultants in those countries.

The DOE cannot allow consultants to have free reign over DOE projects that cost millions of dollars. DOE officials who are charged with oversight of the projects must be held accountable for failing to supervise them. It is the recommendation of this office that with respect to requirements contracts, the DOE establish a protocol to be triggered when a contract exceeds its estimated cost by more than a percentage specified in advance. In such cases, a disinterested DOE official (one whose work responsibilities are not affected by the contract) should be assigned to thoroughly review the matter, and to make specific, documented recommendations to the Chancellor.

We are referring this matter to the United States Attorney's Office for the Southern District of New York, and to the New York County District Attorney's Office.

We note that the conduct described here may violate the conflicts of interest provisions of the New York City Charter which is administered by the New York City Conflicts of Interest Board.

We are forwarding a copy of this letter and of our report concerning this investigation to the Office of Legal Services. Should you have any inquiries regarding the above, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to the case. He can be reached at (212) 510-1486. Please notify Deputy Commissioner Conroy within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated regarding this investigation. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____
Gerald P. Conroy
Deputy Commissioner

RJC:GPC:gm

c: Michael Best, Esq.
Theresa Europe, Esq.