

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Inspector General**

Inspector General



**Executive Summary Concerning the Results  
of an Office of the Inspector General Investigation  
Into Misconduct Violations by a Former Employee  
of the Office of the Deputy Mayor for Planning and  
Economic Development, an Employee of Fire  
and Emergency Medical Services, an Employee of the  
Office of Contracting and Procurement, and a  
Former Employee of the Executive Office of the Mayor**

2009-0305(S)

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**INVESTIGATIVE SYNOPSIS**

The District of Columbia Office of the Inspector General (OIG) initiated an investigation in April 2009 after receiving from the District of Columbia Council (Council) Chairpersons for the Committees on Government Operations and the Environment, and Public Safety and the Judiciary, a request for an investigation into the donation of surplus Fire and Emergency Services (FEMS) equipment to District of Columbia Nonprofit 1, and all related issues, including the emergency rulemaking published in the March 20, 2009, D.C. Register authorizing the donation. The OIG investigation revealed that the former Office of the Deputy Mayor for Planning and Economic Development (DMPED) Director of Development (DOD) (former DMPED DOD),<sup>1</sup> and a Deputy Fire Chief, FEMS, each engaged in conduct that violated eight sections of the DPM,<sup>2</sup> by accepting from the Mayor of Sosúa, Dominican Republic free transportation and meals in exchange for taking steps to ensure that valuable FEMS fire equipment was donated to Sosúa, without following the proper procedures for disposing of surplus FEMS equipment and donating District property. The OIG investigation also revealed that Office of Contracting and Procurement (OCP) Property Disposal Specialist 1 engaged in conduct that violated three sections of the DPM,<sup>3</sup> by underestimating the value of the initial fire

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<sup>1</sup> The former DMPED DOD was a Special Assistant in the Office of Public Education Facilities Modernization from March 28, 2010, until January 5, 2011, when he separated from District government.

<sup>2</sup> DPM § 1803.1 (Responsibilities of Employees) provides that District government employees shall avoid conduct that might result in or create the appearance of: (a)(1) Using public office for private gain; (a)(2) Giving preferential treatment to any person; (a)(3) Impeding government efficiency or economy; (a)(4) Losing complete independence or impartiality; (a)(5) Making a government decision outside official channels; or (a)(6) Affecting adversely the confidence of the public in the integrity of government. Section 1803.2 provides that except as noted in § 1803.3, a District government employee shall not solicit or accept, either directly or through the intercession of others, any gift from a prohibited source. Section 1803.6 provides that an employee shall not accept a gift, present, or decoration from a foreign government unless authorized by Congress as provided by the Constitution and in 5 USC § 7342.

<sup>3</sup> DPM §§ 1803.1 (a)(2), (5), and (6).

truck and expediting Nonprofit 1's application for surplus property. Finally, the OIG investigation revealed that the former Executive Office of the Mayor (EOM) General Counsel (GC) (former EOM GC) violated one section of the DPM.<sup>4</sup>

OIG investigators interviewed District government personnel involved in donating fire equipment to Sosúa, including employees of FEMS, OCP, the Office of the Attorney General for the District of Columbia (OAG), and EOM. OIG investigators also interviewed non-District government employees including the Nonprofit 1 Co-Founder, the Nonprofit 2 Founder, a Company Owner, and the Mayor of Sosúa.

Finally, OIG investigators reviewed pertinent records including FEMS Apparatus Replacement Guidelines, the FEMS Property Disposal Procedure, OCP Procedural Guidelines for the Disposition and Disposal of District of Columbia Government Owned Excess and Surplus Personal Property (OCP Surplus Property Guidelines), OCP Personal Property Management Manual, Federal Surplus Property Assistance Program applications and related documents submitted by Nonprofit 1 and Nonprofit 2, as well as electronic mail messages (e-mails) sent and/or received by some of the above-listed persons.

## I. PROCEDURES GOVERNING DISPOSAL OF SURPLUS PROPERTY

### A. FEMS Apparatus Replacement Guidelines

FEMS has Apparatus Replacement Guidelines (undated), which provide that an Apparatus Evaluation Team, consisting of the Vehicle Coordinator, General Foreman, three Technicians from the Operations Division, and a Mechanic are required to conduct an annual inspection and evaluation of apparatus nearing replacement. Page 1 of the Apparatus Replacement Guidelines states that “[f]actors influencing apparatus replacement are age, mileage, engine hours, cost per mile, and overall condition of the apparatus; the greatest weight is placed on mileage and age.” In particular, the Apparatus Replacement Guidelines provide that every spring, the Apparatus Evaluation Team shall inspect all heavy apparatus 5 years and older and all light apparatus at 36,000 miles or greater using the appropriate evaluation form and make “recommendations for improving the performance or extending the expected life span of the apparatus.” *Id.* at 2. The Apparatus Replacement Guidelines provide that frontline heavy apparatus (such as pumper and other trucks) should be replaced when they are between 5 and 8 years-old and reserve heavy apparatus should be replaced when they are between 9 and 12 years-old. Frontline light apparatus (such as ambulances) must be replaced when they have acquired between 45,000 and 60,000 miles, and reserve light apparatus should be replaced when they have acquired between 70,000 and 90,000 miles.

### B. FEMS Property Disposal Procedure

The FEMS Property Disposal Procedure, Vehicle Property Disposal Action (PDA), Apparatus Division (Mar. 2007) document, states that the Deputy Fire Chief at the Apparatus Division shall determine whether an FEMS vehicle is in need of disposal. In addition, all of the useful equipment on the vehicle shall be removed as well as the license plates and all agency markings.

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<sup>4</sup> DPM § 1803.1 (a)(2).

When all disposal procedures have been executed, the Deputy Fire Chief of the Apparatus Division completes a PDA form and the vehicle is removed from the vehicle roster and transported for disposal.

#### C. OCP Surplus Property Guidelines

The OCP Surplus Property Guidelines<sup>5</sup> provide that each District agency should designate an administrative or supervisory employee as the agency's Accountable Property Officer (APO) to serve as a liaison to OCP's Personal Property Division (PPD) for the disposition of property. Further, when District agencies want to dispose of excess personal property, the APO should prepare a PDA form and submit it to PPD. The PPD then surveys the property identified on the PDA and issues a disposition decision. The Agency's APO is expected to make the final disposition of the property according to PPD's instructions.

#### D. OCP Personal Property Management Manual (PPMM)

The governing authority for District government personal property is outlined in the OCP Personal Property Management Manual § 2632.<sup>6</sup> Specifically, the PPMM establishes regulations for use of unserviceable property, and un-saleable and saleable surplus property. The PPMM, Section 2632.1 (P)(1), states that accountable property that has become unserviceable may be salvaged for construction or repair of other property. Section 2632.1 (Q)(3) provides that un-saleable surplus, e.g. property without usable life or inherent value, is destroyed by consignment to a landfill or other means. Saleable surplus property, if it retains value, is disposed of by competitive bid, negotiated sale, or trade-in for like property. *Id.* § 2632.1 (Q)(4). According to the OCP website, District surplus property - including Police, Fire, and EMS vehicles - is auctioned on-line.

#### E. Federal Surplus Property Assistance Program (Federal Surplus Program)

The OCP website also provides information about the Federal Surplus Program, a state-run, federal surplus program for the donation of federal surplus property to public, tax-supported entities and eligible, private nonprofit organizations. The Federal Surplus Program applies to federal surplus property PPD receives and redistributes to D.C. agencies and nonprofits.<sup>7</sup> It does not apply to FEMS fire trucks and ambulances that are procured from vendors with District government funds. At the time of the events at issue, D.C. law did not address surplus property donations to nonprofits.<sup>8</sup>

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<sup>5</sup> The OCP Surplus Property Guidelines are available in the reception area at OCP as a hand-out. There is no apparent effective date provided on the hand-out.

<sup>6</sup> In addition, D.C. Code § 2-307.01(2) requires the Mayor to issue rules governing the "sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, competitive electronic sales, or other appropriate method designated by regulation . . ."

<sup>7</sup> See 41 C.F.R. pt. 102-37.5. The federal program's requirements are mirrored in District regulations at 27 DCMR §§ 900-934.

<sup>8</sup> The D.C. Council's Committee on Government Operations and the Environment's *Report of the Surplus Property and Rulemaking Investigation* (Jan. 27, 2010) notes the lack of statutory and regulatory authority for the donation of District surplus, as apparently the "PPD follows the same procedure for both federal and District property, despite the fact that the Personal Property Manual is silent as to any procedure related to nonprofit donation." *Id.* at n. 7. As a result, the Committee included statutory provisions for the donation of District surplus property to nonprofit

Eligible nonprofit organizations that wish to participate in the program must submit an application that includes documentation showing the organization's status and a written description of all program services and/or activities, facilities, staff, population or enrollment, fees, and funding sources, etc. The organization also must submit copies of its 501(c) (3) letter of exemption under the Internal Revenue Service tax code, articles of incorporation, and current by-laws. The applicant may include a Wish List (which is a listing of the types and kinds of equipment, vehicles, or other items) that describes the manner in which the requested property will be used. Also, when the nonprofit organization identifies surplus property it wants, the nonprofit organization's APO must complete OCP's Request for Excess Property form.

The application includes a certification that the donee of a nonprofit organization must sign stating that:

the property is needed for and will be used by the recipient for education or public health purposes, and including research for such purpose. The property is not being acquired for any other use or purpose, or for sale or other distribution; or for permanent use outside the State (District of Columbia), except with prior approval of the State Agency for Surplus Property (SASP). (*Id.* at 1.)

The certification also requires that the donee agree to the federal condition that the property will be used for the purposes for which acquired within 1 year of receipt and continued in such use for 1 year. If not, the donee must return the property to SASP<sup>9</sup> or otherwise make the property available for transfer or disposal by SASP. For all passenger motor vehicles and items that cost \$3,000 or more, the certification states that the "property shall be used only for the purpose(s) for which acquired and for no other purpose(s)" for 18 months, unless SASP sets a further period of restriction for items of major equipment. *Id.* If the property is not used as required, "then title and right to the possession of such property shall, at the option of the SASP, revert to the SASP of the District of Columbia and the donee shall release such property to such person as the SASP shall direct." *Id.* Finally, during the applicable period of restricted use, the donee cannot dispose of the property, or remove it permanently for use outside the District of Columbia without the prior approval of the SASP.

#### F. Emergency Rulemaking

According to D.C. Code § 2-505(c):

[I]f, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. No such rule shall remain in effect longer than 120 days after the date of its adoption.

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entities in its "Procurement Practices Reform Act of 2010" (D.C. Act 18-723), which was introduced on January 5, 2010, and was scheduled to take effect on April 7, 2011.

<sup>9</sup> According to OCP's website, the Educational Surplus Property Section of PPD is the District's SASP.

The former OCP Chief of Staff<sup>10</sup> told OIG investigators that OCP has the authority to donate District government property to nonprofit organizations located in the District of Columbia. The organization, however, must maintain the property in the District for a minimum of 18 months unless an emergency rulemaking is drafted and approved by the Chief Procurement Officer. According to the former OCP Chief of Staff, the emergency rulemaking is a standard process for any donation outside of the District where the property would remain with a non-District agency or nonprofit organization. Once the Chief Procurement Officer approves the emergency rulemaking, the nonprofit has 90 days from the date of approval to deliver the property to its final destination.

The OCP GC further explained to OIG investigators that when a District agency seeks to donate property for use outside the District of Columbia, the District government must publish an emergency rulemaking. Emergency rulemaking is authorized by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985 (PPA), effective February 21, 1986, D.C. Law 6-85, D.C. Code §§ 2-302.02 and 2-302.04 (2006), and by Mayor's Order 2002-207 (December 18, 2002). The OCP GC told OIG investigators that OCP does not require an explanation for the donation, only the identifiers to place in the preamble. The preamble is the "quasi-justification" for the rule, which identifies the name of the nonprofit organization and the destination (outside of the District of Columbia) for the property. According to the OCP GC, the emergency rulemaking supersedes the requirement that the property be used by the donee in the District of Columbia for 18 months. Once the emergency rulemaking is drafted and approved by the OCP Chief Procurement Officer, it is sent to the Chief of the OAG Legal Counsel Division (Legal Counsel Division Chief) for review as to legal sufficiency. If the Legal Counsel Division Chief certifies the emergency rulemaking as legally sufficient, the emergency rulemaking is published on OCP's website and in the D.C. Register. The emergency rulemaking remains in effect for up to 120 days from the date of adoption, unless superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the D.C. Register.

## II. FINDINGS OF FACT

### A. The Mayor of Sosúa's November 2007 Meeting With District Officials to Request Donation of FEMS Equipment

In an interview with OIG investigators, Nonprofit 2's Founder stated that he visited Sosúa, Dominican Republic in October 2007 and observed that the town's fire truck and ambulance were old and outdated. He offered to help facilitate the donation of vehicles, including a fire truck and an ambulance, in exchange for the Mayor of Sosúa's assistance with a boxing tournament. The tournament, scheduled for November 22, 2007, was to be held in Sosúa and featured District of Columbia at-risk youth as participants. Nonprofit 2's Founder and the Mayor of Sosúa also discussed having Sosúa and the District of Columbia become sister cities.<sup>11</sup> The Mayor of Sosúa also told OIG investigators that Nonprofit 2's Founder offered to help him acquire a fire truck and ambulance because Sosúa's equipment was outdated and in poor condition.

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<sup>10</sup> The former OCP Chief of Staff was Chief of Staff from November 2006-May 2009 and, in this position, supervised OCP's PPD.

<sup>11</sup> This agreement was intended for the District to help Sosúa with economic development.

Nonprofit 2's Founder told OIG investigators that in early November 2007, the Mayor of Sosúa visited the District of Columbia and requested a meeting with the Mayor. The Director of Protocol and International Affairs, Office of the Secretary, EOM, (Director of Protocol) who manages delegation, dignitary, and ambassador visits, told OIG investigators that she received a request from a church group for the Mayor of Sosúa to meet with the District of Columbia Mayor. She said that the request was unusual because it was an unofficial request and, in fact, does not appear on the list of official requests the Director of Protocol provided to the OIG. The Director of Protocol, however, arranged for the former DMPED DOD to attend the meeting with the Mayor of Sosúa on behalf of the District of Columbia Mayor.<sup>12</sup>

The meeting, which was held on November 14, 2007, was attended by several people including: the Mayor of Sosúa and his assistant; the former DMPED DOD; the Director of Protocol, and the Secretary of the District of Columbia, EOM. According to the Director of Protocol, the attendees addressed economic development and possible assistance from the District government. The former DMPED DOD, in an interview with OIG investigators, stated that the Mayor of Sosúa inquired at the meeting about surplus equipment and specifically asked the former DMPED DOD if the District would donate a fire truck and ambulance to Sosúa. The former DMPED DOD told OIG investigators that he agreed to be of assistance and subsequently made several telephone calls, ultimately speaking to Property Disposal Specialist 2 to identify which vehicles to donate to Sosúa.<sup>13</sup> The former DMPED DOD also said that he was told that Property Disposal Specialist 1 could answer questions about the process for obtaining surplus equipment and placement on an approved list of nonprofit organizations. The former DMPED DOD said that he provided Nonprofit 2's Founder with Property Disposal Specialist 1's contact information and shortly thereafter, OCP approved the application of Nonprofit 2's Founder.

#### B. The Search for a Fire Truck and an Ambulance Begins

E-mails obtained by the OIG from the former Attorney General for the District of Columbia (former Attorney General 1) show that a former EOM employee sent an e-mail dated November 26, 2007, to the then Chief, FEMS (former FEMS Chief), asking about the disposition of fire trucks and other equipment that no longer are "in commission" and whether "out of commission" trucks and equipment could be donated. The former FEMS Chief replied in an e-mail later that day that when FEMS is finished with a vehicle, it is turned over to OCP for survey, removal from the inventory list, and public auction "in an attempt to get the best return on the City investment applying the funds to the General Fund." The former FEMS Chief also wrote in the November 26, 2007, e-mail to the former EOM employee that questions about donating equipment should be directed to OCP and the OAG. He also pointed out that there might be liability issues and laws about the disposal of capital equipment that need to be considered before it may be given away. The former FEMS Chief copied a number of people on that e-mail, including the then Chief Procurement Officer, OCP (former CPO) and the then Attorney General, OAG (former Attorney General 2). The former EOM employee responded that he would pass this information on to the former DMPED DOD "to see if this is something we have an intent to pursue."

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<sup>12</sup> The Director of Protocol explained that she initially asked the then Deputy Mayor of Planning and Economic Development, to attend, but he was unavailable, as was DMPED's Chief Operating Officer.

<sup>13</sup> Property Disposal Specialist 2 passed away prior to the start of the OIG investigation.

On November 27, 2007, the former CPO responded to the former EOM employee's e-mail, stating that the former OCP Chief of Staff manages the OCP surplus property division and asked the former OCP Chief of Staff, who is included on the e-mail, to provide pertinent information. The former OCP Chief of Staff sent the former EOM employee an e-mail on November 28, 2007, asking the former EOM employee to call him so they could discuss the details. In an e-mail dated November 30, 2007, the former OCP Chief of Staff told the former DMPED DOD that Property Disposal Specialist 2 is checking for a truck and ambulance. In a late December 2007 e-mail chain entitled "Eng. 194," sent to the former DMPED DOD and other District officials, the former FEMS Chief wrote that he "will check and see if that Engine is being surplused out of the fleet? If so, I am sure that we have the 'life time' maintenance records. Also, we[re] you able to get clearance from the AG's Office to donate a vehicle? We will get back shortly."

B. DMPED Officials Visit Sosúa With Company Owner and Nonprofit 2 Founder

The former DMPED DOD told OIG investigators that in late December 2007, he visited Sosúa, for the first time with a former DMPED Project Manager and the Company Owner to attend a bachelor party. The former DMPED DOD and the Company Owner previously were Advisory Neighborhood Commissioners and developed a friendship. The former DMPED DOD told OIG investigators that this was his first trip to the Dominican Republic, that it was planned by the former DMPED Project Manager and included 15 other friends, and that he paid for the trip using his personal funds. The former DMPED DOD said that his trip was arranged prior to him attending the November 14, 2007, meeting. Nonprofit 2 Founder also said that when he visited Sosúa at that time, he introduced the Company Owner and others to the Mayor of Sosúa at the former DMPED DOD's request.

The former DMPED DOD responded to the former OCP Chief of Staff's November 30, 2007, e-mail on January 29, 2008, after his first trip to Sosúa, stating that he found a nonprofit organization to transport the truck and asking for details on the "official process." The former OCP Chief of Staff responded to the former DMPED DOD by e-mail on January 30, 2008, requesting that the former DMPED DOD provide the point-of-contact for the nonprofit organization to Property Disposal Specialist 2. The former OCP Chief of Staff also wrote that if:

DPW is declaring the equipment excess they should initiate the PDA with [Property Disposal Specialist 2] who can declare it surplus. [Property Disposal Specialist 1] can take the action from there to get the equipment donated to the non-profit. If this equipment is going to be donated to a foreign country someone will need to provide a justification so that emergency rule making can be provided for OCP General Council [sic]. It is my understanding that this will/may require Council approval.

D. OCP Approves Nonprofit 2 Founder's Federal Surplus Program Application

The Nonprofit 2 Founder said that in early 2008, he contacted Property Disposal Specialist 1, who provided him with the Federal Surplus Program application. According to the Nonprofit 2 Founder and Property Disposal Specialist 1, Property Disposal Specialist 1 also conducted a site visit at Nonprofit 2 to see how and where the organization would use the surplus property.

Documents obtained from OCP show that Nonprofit 2 submitted a Federal Surplus Property Assistance Program application dated March 15, 2008. That document, which is one page, indicates that certain supplemental materials were included and a copy of the organization's tax-exempt 501(c)(3) status, a description of its program services and/or activities, and articles of incorporation are attached. It does not, however, include a statement describing how the requested property will be used in the authorized programs. The application was approved by the former OCP Chief of Staff on April 14, 2008.

In June 2008, Nonprofit 2 Founder and Property Disposal Specialist 2 visited a location where decommissioned FEMS vehicles are stored in search of a fire truck and an ambulance. Fire truck #194 and an ambulance, according to the Nonprofit 2 Founder, were in poor condition, and chosen to be donated to Sosúa. The Nonprofit 2 Founder explained that by July 2008, he had contacted a Councilmember to inquire about a shipping company for the vehicles, and the Councilmember gave him the name of Shipping Company 1. The Nonprofit 2 Founder contacted Shipping Company 1 and received a verbal price quote, but was told that the vehicles would have to be drivable. Because fire truck #194 did not have an engine, Shipping Company 1 would not transport the truck. The Nonprofit 2 Founder told OIG investigators that shortly after he learned that fire truck #194 could not be transported by Shipping Company 1, he met with the former DMPED DOD to express the need for better equipment.<sup>14</sup>

The former DMPED DOD informed the OIG that he then contacted the Mayor of Sosúa's Assistant and explained that the fire truck needed \$50,000 in repairs before it could be shipped. According to the former DMPED DOD, the Mayor of Sosúa's Assistant said that Sosúa would accept anything and could get it fixed for a lower price in Sosúa. The former DMPED DOD said that he told the Mayor of Sosúa's Assistant that because the Nonprofit 2 Founder was unable to find a transport company for the fire truck, the former DMPED DOD was to continue to search for another vehicle to donate to Sosúa.

E. FEMS Identifies Another Fire Truck to Donate to Sosúa

In an August 27, 2008, e-mail to the Deputy Fire Chief, the former DMPED DOD asks:

[I]s there another fire truck planned to go out of service any time soon? Eng. 194 is in rough shape, which will cost about \$50,000 to get into working condition. We are having trouble finding a shipping company who will ship it to the Dominican Republic when the truck is not in working order. If there is another truck scheduled to come off line soon, we might want to try and get one over to the Dominican in better condition.

On November 25, 2008, the Deputy Fire Chief responded to that e-mail stating that he "will have a fire truck going out of service within the next 60-75 days."

In his interview with OIG investigators, the Deputy Fire Chief said that FEMS does not have a written policy regarding the method of determining which emergency vehicles are to be

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<sup>14</sup> At the time of the OIG investigation, fire truck #194 was being used for parts to repair other FEMS trucks.

decommissioned and disposed of as excess property.<sup>15</sup> The Deputy Fire Chief stated that he had authority at the time to decommission and dispose of surplus property by completing a PDA.

In late November/December 2008, the Deputy Fire Chief contacted the former DMPED DOD to advise him that fire truck #S-104, located at 1103 Half St., SW, was in the process of being decommissioned. Shortly thereafter, the former DMPED DOD and the Company Owner met with the Deputy Fire Chief and inspected fire truck #S-104. During that visit, the former DMPED DOD asked the Deputy Fire Chief if he would provide training to Sosúa fire officials on the donated truck. The Company Owner said that soon thereafter, he started researching various shipping companies to transport the fire truck and ambulance to Sosúa and obtained a shipping cost estimate from Shipping Company 2. According to the Company Owner, he had several conversations with the former DMPED DOD about the donation of a fire truck to Sosúa and offered to help obtain the truck and facilitate the donation. Another PPD Specialist told OIG investigators that prior to the disposal of fire truck #S-104, the PPD Specialist had conducted a site visit and thought the fire truck was going to be auctioned.

#### F. Property Disposal Action and Request for Excess Property Forms

##### 1. Fire Truck #S-194

A review of the FEMS PDA, dated June 15, 2006, revealed that 15 vehicles were listed, including fire truck #S-194.<sup>16</sup> FEMS' APO's signature is on the PDA, which indicates that the vehicles were unserviceable and uneconomical to repair. The PDA requires listing the acquisition cost of each vehicle reported for disposal/transfer. The PDA instructions define acquisition cost as "the cost to the original owner of the property at the time of purchase, or the cost to the owning/custodial agency of the property at the time of acquisition if any such cost were [sic] incurred." The PDA instruction form also states that if "the actual acquisition cost is unknown, provide the most intelligent and accurate estimate possible . . . ."

The acquisition cost listed on the June 2006 PDA for fire truck #S-194 was \$199,030.33. The PDA form was approved, but contains an illegible signature. An attached memorandum, dated June 30, 2006, however, shows that Property Disposal Specialist 2 received the titles to those vehicles on June 15, 2006.

A June 9, 2008, Request for Excess Property form shows that the Nonprofit 2 Founder requested fire truck #194 with an acquisition cost of \$1,000 and an EMT ambulance (unknown vehicle number) with an acquisition cost of \$1,000. The request form was signed by Property Disposal Specialist 1 on July 15, 2008.

Property Disposal Specialist 1 acknowledged to OIG investigators that the June 2006 PDA lists the acquisition cost for fire truck #S-194 as \$199,030.33. The same PDA lists several ambulances, which vary in acquisition cost from \$60,648.48 to \$75,132. She also acknowledged

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<sup>15</sup> Although the Deputy Fire Chief said during his interview that FEMS did not have a written policy in effect, he later provided, through his attorney, the FEMS Apparatus Replacement Guidelines with the caveat that these guidelines were not enforced.

<sup>16</sup> The June 15, 2006, PDA, which lists fire truck #S-194, shows that the initial fire truck selected for the donation already was decommissioned at the time it was selected. In contrast, fire truck #S-104 and ambulance #S-671 had not yet been decommissioned at the time they were selected for donation to Sosúa.

that the Nonprofit 2 Founder's Request for Excess Property form lists the acquisition costs for fire truck #S-194 and the unidentified ambulance at \$1,000 each. Property Disposal Specialist 1 told OIG investigators that she did not see the June 2006 PDA for the fire truck and the ambulance before she filled out the Request for Excess Property form, so she made up the total acquisition cost for each vehicle when she filled out the Request for Excess Property form. Property Disposal Specialist 1 also told OIG investigators that the Nonprofit 2 Founder had described the truck as old and rusty, but denied that he or anyone else asked her to falsify information on any OCP forms.<sup>17</sup>

## 2. Fire Truck #S-104 and Ambulance #S-671

The PDA for fire truck #S-104, dated December 17, 2008, indicates that the FEMS' APO, requested to transfer the vehicle to OCP PPD because it was uneconomical to repair. The acquisition cost for fire truck #S-104 is listed as \$240,895. On February 25, 2009, the OCP PPD approved and signed the PDA. The Deputy Fire Chief is listed as the contact person on the PDAs for fire truck #S-104.

The PDA for ambulance #S-671, dated March 11, 2009, requests transfer to OCP PPD because it was unserviceable, but was not signed by a FEMS APO. The PDA lists an acquisition cost totaling \$75,132. On March 12, 2009, the OCP PPD approved and signed the PDA form. The Deputy Fire Chief is listed as the contact person on the PDAs for ambulance #S-671.

A March 16, 2009, Request for Excess Property form shows that the Nonprofit 1 Co-Founder requested fire truck #S-104 with an acquisition cost of \$240,895 and an E-450 ambulance with an acquisition cost of \$75,132. Property Disposal Specialist 1 also signed that request on March 16, 2009.

### G. FEMS Employee Travels to Sosúa on Claimed Official Business

In early January 2009, the Deputy Fire Chief received an e-mail from the DMPED DOD regarding upcoming travel to the Dominican Republic for a Super Bowl party. In that same e-mail, the DMPED DOD invited the Deputy Fire Chief to attend the party and provide training on operating fire truck #S-104 and the ambulance for the donation. Later, the Deputy Fire Chief telephoned the DMPED DOD and asked if the District government was paying for his travel expenses to the Dominican Republic. The Deputy Fire Chief told OIG investigators that the DMPED DOD informed him in that telephone conversation that "we are taking care of room and board." Subsequently, the Deputy Fire Chief submitted to the FEMS Assistant Fire Chief, Support Services (Assistant Fire Chief) a request for paid administrative leave for the trip, to provide training to Sosúa Fire Department personnel in the Dominican Republic.<sup>18</sup> The Assistant Fire Chief also signed an employee authorization training form for the Deputy Fire Chief. There is no evidence, however, that he approved an out-of-state travel request for the Deputy Fire Chief (FMS 431).

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<sup>17</sup> When Property Disposal Specialist 1 needed the acquisition cost of fire truck #S-194 for Nonprofit 2's Request for Excess Property form, she could have obtained that figure from the PDA, rather than assigning a value.

<sup>18</sup> The Deputy Fire Chief's administrative leave request states that he will need leave to deliver a fire truck and ambulance to Sosúa.

The Assistant Fire Chief told OIG investigators that he authorized the Deputy Fire Chief to conduct training in Sosúa for the fire truck that was to be donated. He also told OIG investigators that FEMS does not have an approval process to provide training. OIG investigators determined that the District government paid for the Deputy Fire Chief's travel, including his salary, airfare (\$465.30), and *per diem* (\$364.00) to cover his meals.<sup>19</sup> A review of the former DMPED DOD's personal credit card statement shows that he redeemed 25,000 miles from his credit card points to offset the cost of purchasing his plane ticket to the Dominican Republic.<sup>20</sup>

The former DMPED DOD, the Company Owner, and the Deputy Fire Chief went to the Dominican Republic from January 29, 2009, through February 4, 2009. A friend of the former DMPED DOD (Friend 1)<sup>21</sup> and a friend of the Deputy Fire Chief's (Friend 2), who is a volunteer fire Captain in Maryland, also went on the trip. The Deputy Fire Chief told OIG investigators that when he and Friend 2 arrived at the airport in the Dominican Republic, they were greeted by the Mayor of Sosúa and the Mayor of Sosúa's Assistant, who transported them to a villa, which he believed was not open to the general public.<sup>22</sup> After arriving at the private villa, they were greeted by the former DMPED DOD, the Company Owner, and Friend 1. That same night, the Mayor of Sosúa and the Mayor of Sosúa's Assistant treated them to dinner. OIG investigators were unable to estimate the cost of transportation to the villa and dinner.

The Company Owner stated that while in Sosúa, he and the former DMPED DOD met with the Mayor of Sosúa and the Mayor of Sosúa's Assistant. During that meeting, the former DMPED DOD provided updates and photographs of the fire truck and ambulance that had been selected for donation. Financing for transportation of the fire truck and ambulance also was discussed. (On the shipping company invoice, the shipping cost was estimated to be \$11,630.)

According to the Company Owner, the Mayor of Sosúa's Assistant was trying to gather as much money as possible to pay for transporting the vehicles. The Company Owner also stated that 2 days before he left Sosúa, the Mayor of Sosúa's Assistant gave him \$10,000 in cash for the transportation of the fire truck and ambulance.<sup>23</sup> The Company Owner recalled signing a receipt for the cash, but said that the Mayor of Sosúa's Assistant kept the original and that there were no copies. That same day, the Company Owner contacted the former DMPED DOD and informed him that the Mayor of Sosúa's Assistant gave him money to pay a portion of the transportation costs. The Company Owner admitted to OIG investigators that, while in Sosúa, he spent some of the money he received from the Mayor of Sosúa's Assistant for the transportation costs. He said that he did not remember how much he spent, but he felt that he was justified in spending some of the money because he was going to contribute any additional monies that were needed to cover the transportation costs. The Company Owner also told OIG investigators that when he returned to the United States, he obtained the remainder of the money that was necessary for shipment, from his company's bank account.

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<sup>19</sup> Although the Deputy Fire Chief traveled to Sosúa, the fire truck and ambulance remained in the District and were still in operation at that time.

<sup>20</sup> A review of the former DMPED DOD's leave request shows that he used annual leave for his trip to Sosúa.

<sup>21</sup> OIG investigators made several unsuccessful attempts to interview Friend 1.

<sup>22</sup> OIG investigators asked the former DMPED DOD, the Deputy Fire Chief, and Friend 2 for the name of the villa, but each told OIG investigators that he could not recall the name.

<sup>23</sup> The Mayor of Sosúa, however, informed the OIG that he gave the Company Owner \$11,000 for the shipping costs.

A Super Bowl party was held at the villa on the fourth day. The Deputy Fire Chief told OIG investigators that there were male and female attendees and he believed the Mayor of Sosúa's Assistant also came to the party.

On the fifth day in Sosúa, the former DMPED DOD and the Company owner asked the Deputy Fire Chief and Friend 2 to travel with them to Dajabon, Dominican Republic. The Deputy Fire Chief declined because he and Friend 2 planned to visit Sosúa's City Hall, the Mayor's Office, and the Emergency Preparedness building. Later that day, when the Deputy Fire Chief and Friend 2 returned to the villa, they noticed several plaques on a table. The Deputy Fire Chief asked the former DMPED DOD about the plaques and the former DMPED DOD replied that they each received a plaque because the City of Dajabon hosted a ceremony on their behalf and Dajabon is also in need of FEMS apparatus and equipment. A review of the Deputy Fire Chief's notes from the trip indicate that he spent a considerable amount of time evaluating Sosúa's fire prevention/containment infrastructure and needs (such as the number of hydrants, water pressure, etc). Although his notes show that he discussed the importance of formalized training as part of his assessment, they do not indicate that he provided any training.

In an e-mail chain dated February 10, 2009, from the former DMPED DOD to the Deputy Fire Chief regarding the timeframe for the delivery of the fire truck, the former DMPED DOD asked whether the Deputy Fire Chief was ready to go back to Sosúa. The Deputy Fire Chief responded, "[b]ut of course, I am in the process of acquiring some turnout gear along with some tools/hose. I am also getting the ambulance taken care of." The former DMPED DOD then replied, "[c]an we get some equipment for Dajabon also?" The Deputy Fire Chief responded, "[t]hat's in the works may take a minute. We are ordering 5 new units so this may be about 60-90 days out."<sup>24</sup>

#### H. Former EOM General Counsel and former Ethics Counselor Provide Assistance

In early February 2009, the Company Owner called the former GC to the Mayor (former EOM GC). The former EOM GC told OIG investigators that the Company Owner's initial call asked who could assist him in obtaining a fire truck for donation overseas. The former EOM GC referred the Company owner to the former D.C. Ethics Counselor, OAG (former Ethics Counselor). The former EOM GC said that he later received an update from either the Company Owner or the former Ethics Counselor, informing him that OCP handles surplus property. The former EOM GC received another telephone call from the Company Owner asking who at OCP could facilitate the donation process. The former EOM GC referred the Company Owner to the former OCP Chief of Staff. The former EOM GC told OIG investigators that he also spoke with the former OCP Chief of Staff, who explained the process for obtaining surplus property and the emergency rulemaking requirements for an approved District 501(c)(3) nonprofit organization. The former OCP Chief of Staff also referenced a previous attempt to donate a fire truck with Nonprofit 2. The former EOM GC, however, said that he did not recall the former OCP Chief of Staff's explanation as to why the donation did not occur.

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<sup>24</sup> In an e-mail chain dated February 13, 2009, to February 16, 2009, between the Deputy Fire Chief and the Company Owner, the Company Owner requested a "donation letter" indicating that the District government is in the process of donating a fire truck and ambulance to Sosúa. Accordingly, the Deputy Fire Chief drafted a memorandum dated February 17, 2009, on District government letterhead, to the Mayor of Sosúa's Assistant, as the Company Owner had requested.

The former Ethics Counselor told OIG investigators that during multiple telephone conversations, the Company Owner asked about the District's process for donating surplus property to a nonprofit organization. At some point in their discussions, the Company Owner indicated that he was assisting a nonprofit organization with the donation of a fire truck and ambulance. In addition, the former Ethics Counselor received from the Company Owner, a draft of a document the Company Owner created to assist with the process. In an e-mail dated February 19, 2009, to the former OCP Chief of Staff, the former Ethics Counselor wrote:

FEMS has already taken steps to decommission the equipment, a pumper truck, salvage material of use to the District, and has signed off on declaring it surplus. We also have a draft MOU outlining the proposed disposal-including provisions noting that the equipment is to be taken at no cost to the District in as-is condition.<sup>25</sup>

The former Ethics Counselor told OIG investigators that he researched the rules and discovered that OCP handles donations. He subsequently contacted the OCP GC to ask about surplus property. The OCP GC told OIG investigators that she did not remember if the former Ethics Counselor specifically mentioned the fire truck, but that she referred the former Ethics Counselor to the former OCP Chief of Staff, who could outline the procedures for donating surplus property. The OCP GC also received an e-mail from the former EOM GC asking if anyone had requested that she draft an emergency rulemaking. The OCP GC commented that the e-mail did not contain any details as to the name of the nonprofit organization and/or the type of property.

The former OCP Chief of Staff told OIG investigators that on February 19, 2009, he received from the former Ethics Counselor an e-mail and a telephone call asking how to donate FEMS equipment to the Dominican Republic. The former OCP Chief of Staff explained to the former Ethics Counselor that he needed a D.C. nonprofit organization to which to donate the property because the final destination for the property was an overseas entity. He also explained that this required an emergency rulemaking drafted and approved by the former CPO.

The former OCP Chief of Staff said that in a conversation with the former Ethics Counselor, he was informed that Nonprofit 1 was to receive the donation. The former OCP Chief of Staff advised the former Ethics Counselor that he would check with Property Disposal Specialist 1 to determine whether Nonprofit 1 was a member of the Federal Surplus Program. If not, then Nonprofit 1 would have to be vetted. The former OCP Chief of Staff believed that the former EOM GC listened (while in the same room with the former Ethics Counselor) to his conversation because shortly after he explained the process to the former Ethics Counselor, he received an e-mail from the former EOM GC providing a contact number for the Nonprofit 1 Co-Founder. The former OCP Chief of Staff subsequently forwarded that e-mail to Property Disposal Specialist 1 and asked her to "let him know if this non-profit [Nonprofit 1] is registered with the District." The e-mail said that if the organization was not on the list, then Property Disposal Specialist 1 needed to contact the Nonprofit 1 Co-Founder to complete the Federal Surplus Property application. The Nonprofit 1 Co-Founder informed OIG investigators that he received

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<sup>25</sup> In a follow-up interview, the former Ethics Counselor explained that he did not draft the MOU and did not recall if such a document actually existed. He remembered, however, seeing something resembling a draft of an agreement because he initially thought that the written agreement was the correct process for the donation. The former Ethics Counselor said that after speaking with the former CPO it became clear that the document would not be useful.

a telephone call from the Company Owner and later met with the Company Owner and the former DMPED DOD. At the meeting, they discussed donating equipment to the Dominican Republic and asked for Nonprofit 1's assistance. The Nonprofit 1 Co-Founder agreed because he assumed Nonprofit 1 was selected because of its ties to the District community. He also was advised to contact Property Disposal Specialist 1 to assist with the application process.<sup>26</sup>

#### I. OCP Approves Nonprofit 1's Federal Surplus Property Program Application

Property Disposal Specialist 1 contacted the Nonprofit 1 Co-Founder to assist Nonprofit 1 with the application. Documents obtained from OCP show that Nonprofit 1 submitted an application dated February 24, 2009. The one-page application has the following materials attached: 1) a copy of the tax-exempt 501(c)(3) status; 2) a description of program services and/or activities; 3) Nonprofit 1's articles of incorporation; 4) staff resumes and qualifications; 5) documented sources of grant funding; and 6) a statement describing how the requested property will be used in the authorized programs. The former OCP Chief of Staff approved the application on March 2, 2009. Property Disposal Specialist 1 told OIG investigators that she conducted a site-visit at Nonprofit 1 to see how and where the organization would use the surplus property. Property Disposal Specialist 1 indicated that she was not aware that Nonprofit 1 had expressed an interest in a fire truck and ambulance when she submitted her approval of the application to the former OCP Chief of Staff.

Several weeks after returning from Sosúa in February 2009, the Deputy Fire Chief contacted the Company Owner, who informed him that approval for the donation was still underway and asked the Deputy Fire Chief the dimensions of the fire truck and ambulance to relay to the shipping company. A week later, the Deputy Fire Chief received from the Company Owner an e-mail regarding OCP's emergency rulemaking and a telephone call introducing him to the Nonprofit 1 Co-Founder.

#### J. OAG Approves Emergency Rulemaking

In early March 2009, the former OCP Chief of Staff requested that the OCP GC draft an emergency rulemaking for the donation. The OCP GC explained to OIG investigators that she tasked an OCP Assistant GC to draft the emergency rule. In an e-mail dated March 2, 2009, from the OCP GC to the OCP Assistant GC, the OCP GC stated that "[the former OCP Chief of Staff] needs an emergency rulemaking to send a fire truck to the Dominican Republic through [Nonprofit 1]. Could you please prepare this as a priority? It can be modeled on the rules we did for the stuff donated to Addis Ababa a few years ago." Subsequently, the OCP GC reviewed the draft and, after the former CPO signed it, sent it to the Legal Counsel Division Chief.

On March 6, 2009, the Legal Counsel Division Chief received from the OCP GC a rulemaking transmittal form and OCP notice of emergency rulemaking document to be reviewed for legal sufficiency. On March 9, 2009, he tasked an OAG Legal Counsel Division Senior Assistant Attorney General to conduct the review. According to Legal Counsel Division Chief, the Senior Assistant Attorney General prepared a memorandum addressing the legal sufficiency review of

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<sup>26</sup> In the former OCP Chief of Staff's deposition by the Council, he testified that he wanted Property Disposal Specialist 1 to expedite the application process for Nonprofit 1 because he was going out of town and wanted the task completed before his departure.

the emergency rulemaking. The Senior Assistant Attorney General told OIG investigators that she was chosen because of the review she conducted in 2005 for the donation of books to Ethiopia. The Senior Assistant Attorney General read the preamble and verified that the Procurement Practices Act of 1985 and Mayor's Order 2002-207 were properly cited in the preamble. Subsequently, she reviewed the emergency rulemaking and said that she may have spoken with the OCP GC for clarification. The Senior Assistant Attorney General then drafted the legal sufficiency memorandum for the Legal Counsel Division Chief's approval.

On March 11, 2009, the Legal Counsel Division Chief examined the draft and concurred with the Senior Assistant Attorney General's assessment. The Legal Counsel Division Chief told OIG investigators that no research was done to determine if an emergency existed in Sosúa. He explained that the emergency rulemaking has a broad standard based on the issuing agency's plausible and reasonable decision. In a later interview, the Legal Counsel Division Chief acknowledged that the fire truck and ambulance were not federal surplus property but said that if a District agency has the authority to adopt an emergency rule then he allows it to do so. In addition, he said that the Procurement Practices Act §§ 202 and 204 give OCP the authority to donate supplies for public welfare both within and outside the District of Columbia.

After examining the memorandum, the Legal Counsel Division Chief initialed it, signed the emergency rulemaking transmittal form, and forwarded the documents to the OCP GC. The Legal Counsel Division Chief stated that he has final authority to approve an emergency rulemaking and is not required to seek additional approval from the Attorney General. Subsequently, the emergency rulemaking was published. The text of the rulemaking does not state the type of equipment to be transferred, the date and method of transfer, or the reason for an emergency. In addition, the truck and ambulance were already in transport to Sosúa before the rulemaking was published.

In Nonprofit 1 Co-Founder's interview with OIG investigators, he said that on March 13, 2009, the Company Owner wrote Nonprofit 1 a business check issued from the Company Owner's company, in the amount of \$11,630 to finance shipping of the fire truck and ambulance to Sosúa, Dominican Republic. The Company Owner also said that he wrote a check from his company to Nonprofit 1 for shipping expenses.

According to the Letter of Intent shipping document, dated March 25, 2009, both the fire truck and the ambulance were shipped to Miami, Florida and were awaiting shipment to their final destination in the Dominican Republic.<sup>27</sup>

#### K. OAG Review of Attempted Donation

In late March 2009, after the controversy concerning the donation of the fire truck and ambulance was published in the media, the former EOM GC and the former Ethics Counselor were tasked by former Attorney General 1 to conduct a review of what had transpired and assess any possible improprieties. When OIG investigators interviewed former Attorney General 1, he said that he instructed the Nonprofit 1 Co-Founder to have the fire truck and ambulance returned to the District. The Nonprofit 1 Co-Founder also told OIG investigators that former Attorney

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<sup>27</sup> At the time of the OIG investigation, fire truck #S-104 and ambulance # S-671 were located at OCP's surplus lot. Both vehicles ultimately were auctioned on-line for \$9,050 and \$5,350, respectively.

General 1 instructed him to have the vehicles returned from Miami where they were docked at the time. The Nonprofit 1 Co-Founder explained that the total shipping expenses were not exhausted because the vehicles never reached their final destination. Therefore, the vehicles were returned and the shipping company refunded Nonprofit 1. A review of the shipping company invoice dated March 31, 2009, shows that the fire truck and ambulance were being returned to Nonprofit 1. Because the vehicles never reached their final destination, the invoice indicated a credit of \$1,190.00, which the Nonprofit 1 Co-Founder retained. The Nonprofit 1 Co-Founder said that he hoped to complete the donation at a later time.

According to the former Ethics Counselor, during the review, he obtained documentation from OCP, FEMS, and EOM. He also interviewed the former DMPED DOD, the Deputy Fire Chief, and the Director of Protocol. The former EOM GC stated that he spoke with the Company Owner, the former DMPED DOD, the Nonprofit 1 Co-Founder, the Nonprofit 2 Founder, and the Deputy Fire Chief. The former EOM GC admitted to the OIG that he and the Company Owner are fraternity brothers and that the Company Owner retained him as legal counsel while he was in private practice prior to joining the D.C. government.<sup>28</sup> The former EOM GC further informed the OIG that he did not ask the Company Owner why he traveled to Sosúa, how he became involved in the donation, or why the Company Owner was involved in District government business. When the OIG asked the former EOM GC whether he disclosed to former Attorney General 1 his previous relationship with the Company Owner, the former EOM GC stated that he did not because he did not believe he had a conflict. On April 3, 2009, former Attorney General 1 issued a report based on the former Ethics Counselor and the former EOM GC's findings, which concluded that the disposition was "legal and totally proper."

During the OIG investigation, the Council conducted its own investigation into the donation of the fire truck and ambulance. The Council's reports determined *inter alia*, that standard operating procedures were not followed, and non-governmental actors were able to obtain a fire engine and ambulance at no cost for the exclusive purpose of re-donating the property to a foreign government. The Council's investigation included recorded depositions of Property Disposal Specialist 1, the former OCP Chief of Staff, the Deputy Fire Chief, the former DMPED DOD, the former Ethics Counselor, the former EOM GC, the Mayor of Sosúa, the Nonprofit 2 Founder, the Nonprofit 1 Co-Founder, and the Company Owner. Although the OIG made several requests for copies of all of the recorded depositions, the Council did not immediately provide them. Instead, the Council provided the OIG with copies of the available deposition tapes in February 2010, after it had publicly released its report of investigation. Ultimately, however, the Council was unable to provide the OIG with a copy of the former Ethics Counselor's deposition because there had been a technical error in its recording.

On several occasions throughout this investigation, the OIG discussed the investigation with prosecutors from the United States Attorney's Office for the District of Columbia (USAO). On November 10, 2010, the USAO indicated that there was insufficient evidence for prosecution.

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<sup>28</sup> OIG investigators learned during the course of the investigation that the former OCP Chief of Staff, the former EOM GC, and the Company Owner are fraternity brothers.

## ANALYSIS AND CONCLUSIONS

### I. No Proper Assessment of an Emergency Conducted

The OIG investigation revealed that no District government employee properly assessed the donation to Sosúa and determined that an emergency, necessitating this donation, existed, or why this donation required expediting. In addition, no District government employee made a determination that it was in the District's interests to forego the money the District would have received from auctioning these vehicles, in the usual manner and according to the PPM. Instead, OCP requested an emergency rulemaking and the OAG reviewed and approved the issuance. Subsequently, when issues arose as to whether this donation was proper, the OAG determined that the actions of various District government employees, including OAG attorneys, had been appropriate. The OAG subsequently issued a report stating that the disposition of these trucks had been "legal and totally proper."

Based on the OIG investigation, however, the OIG finds that the former Ethics Counselor and the former EOM GC should have been recused or recused themselves. Because each had participated in attempting to effectuate the donation of the vehicles to Sosúa, there appears to have been an inherent conflict of interest for each of them to then investigate any matters relating to the donation. Such conduct could create at least the appearance that either or both of them had a bias leading them to conclude that the donation was proper. With respect to the former Ethics Counselor, because he participated in the attempt to effectuate the donation in connection with his position as an OAG employee, former Attorney General 1 should have been aware of the possible conflict of interest.

The former EOM GC, however, had an additional conflict of interest, unrelated to his District position, because he had both a personal and previous professional relationship with the Company Owner. The former EOM GC should have disclosed to former Attorney General 1 his personal and previous professional relationship with the Company Owner, which he did not do. Further, during the inquiry the former EOM GC conducted with the former Ethics Counselor, the former EOM GC interviewed the Company Owner and failed to ask pertinent questions about his involvement in the donation and District government business, such as why or how he became involved in the donation. Therefore, the former EOM GC's conflicts undermined the integrity of the investigation and provided a reasonable basis to question the objectivity of its findings.

### II. Lack of Oversight from OCP and OAG

The former OCP Chief of Staff, OCP GC, and attorneys assigned to the OAG Legal Counsel Division failed to exercise proper oversight of the rulemaking process. The OAG Legal Counsel Division, as well as OCP personnel, failed to realize that the Federal Surplus Program only applies to the disposition of federal surplus property. Here, the OAG Legal Counsel Division should have known that the Federal Surplus Program did not apply to FEMS fire trucks and ambulances because they were procured from vendors with District government funds.

In addition, nowhere in the paperwork to support the donation of these vehicles is there a factual justification for an emergency. Even a cursory review of this matter by OAG and OCP personnel should have uncovered that there was, in fact, no emergency justification provided.

Finally, both the OAG Legal Counsel Division personnel and the OCP GC should have known that even if there was sufficient documentation of an emergency, Council approval of an amendment to the procurement regulations was required before the donation could occur.

This lack of proper oversight allowed private parties, such as the Company Owner, inappropriately to influence the activities of District government employees. This further resulted in a waste of District government resources including travel expenses for and the salary of a District government employee, as well as a loss of revenue from the (delayed) sale of the vehicles.

### III. Inapplicable Federal Surplus Program Rules Applied

The Federal Surplus Program governs the disposition of federal surplus property. The vehicles donated to Sosúa, however, were not federal surplus property. Therefore, FEMS, OCP, and OAG erroneously relied on inapplicable provisions of the Federal Surplus Program. Accordingly, the District lacked the legal authority to effectuate the donation of District government property.

In addition, even if the Federal Surplus Program rules had applied, the use of Nonprofit 1 and Nonprofit 2 appears to have been arranged specifically to effectuate the donation because neither entity had any interest in or use for the fire truck and ambulance. In addition, under the Federal Surplus Program, only public health and educational institutions are eligible to receive federal surplus property. Nonprofit 1 does not qualify for either category. Each entity, apparently, was to serve merely as a conduit to transfer ownership of the vehicles from the District government to Sosúa.

Therefore, it is unclear why the former OCP Chief of Staff approved the applications submitted by Nonprofit 2 and Nonprofit 1. Further, it appears that the site visit by Property Disposal Specialist 1 to determine how and where the organization would use the vehicles was conducted simply to give the appearance that proper procedures were being followed. For, it already had been determined that the vehicles were to be shipped to Sosúa and neither nonprofit organization would use or house the vehicles.

### IV. Alternative Means to Properly Effectuate Donation Not Used

As evidenced by the Council's recent legislation, the Procurement Practices Reform Act of 2010 (D.C. Act 18-723), the D.C. Council could have assisted OCP, FEMS, and OAG to effectuate this donation lawfully. Indeed, D.C. Code § 2-302.05 (b) states that all modifications and additions to the District procurement regulations must be approved by the Council via a 60-day review period. Instead of following the law and partnering with the Council to amend the procurement regulations, all three agencies appear to have subverted the legislative process by failing to include the Council in the endeavor to make the donation.

## V. District Employees' Improper Actions

### A. The former DMPED DOD's Conduct

The former DMPED DOD used his position as a DMPED employee to gain the assistance of other District employees to identify vehicles for donation. Specifically, the former DMPED DOD made telephone calls and sent e-mails to employees of EOM, FEMS, and OCP in an effort to select better quality vehicles. By doing so, the former DMPED DOD gave the erroneous impression that the donation of FEMS property was within his purview and responsibilities as an employee of DMPED.

Further, while in Sosúa, the former DMPED DOD participated in unofficial meetings with the Mayor of Sosúa and the Mayor of Sosúa's Assistant to discuss the donation of FEMS property. According to the Nonprofit 2 Founder, the former DMPED DOD also asked him to introduce the Company Owner and others to the Mayor of Sosúa, which ultimately led to the Company Owner handling the transportation of the vehicles. As a result, the Company Owner received at least \$10,000 from Sosúa to cover these costs, some of which he used for his own personal benefit.

Therefore, the former DMPED DOD's conduct created at least the appearance that he allowed his personal relationship with the Company Owner to influence his conduct regarding these donations and ultimately resulted in the selection of Nonprofit 1 as the conduit for these vehicles. Finally, although the DMPED DOD did not travel to Sosúa at District government expense, he accepted a free meal, transportation from the airport to the private villa, and a plaque from Dajabon officials. Because both Sosúa and Dajabon officials apparently had interests that could be affected by the performance of his District government responsibilities, they were prohibited sources under the District's standards of conduct. Therefore, the former DMPED DOD accepted gifts (transportation, a meal, and a plaque) from prohibited sources (the Mayor of Sosúa and officials in Dajabon) while on this trip in violation of the DPM.

Accordingly, the issues of whether the former DMPED DOD violated DPM § 1803.1 (a)(1) (Using public office for private gain); § 1803.1 (a)(2) (Giving preferential treatment to any person); § 1803.1 (a)(3) (Impeding government efficiency or economy); § 1803.1 (a)(4) (Losing complete independence or impartiality); § 1803.1 (a)(5) (Making a government decision outside official channels); § 1803.1 (a)(6) (Affecting adversely the confidence of the public in the integrity of government); § 1803.2 (A District government employee shall not solicit or accept, either directly or through the intercession of others, any gift from a prohibited source); and § 1803.6 (An employee shall not accept a gift, present, or decoration from a foreign government) are **SUBSTANTIATED**.

### B. The Deputy Fire Chief's Conduct

Fire truck #S-104 and ambulance #S-671, which ultimately were designated for donation to Sosúa, were not identified for decommissioning and disposal until after the Nonprofit 2 Founder rejected fire truck #S-194 and the first ambulance. The Deputy Fire Chief, without regard to District decommission and disposal procedures, selected vehicles that had not yet been identified for decommission and disposal and expedited the process so that the vehicles were available for donation in less than 1 month, instead of within 60-75 days as he initially indicated.

Accordingly, the OIG finds that he used his position as a FEMS employee to benefit a private interest and expedited the decommissioning and disposal of the vehicles without following proper procedure.

After being invited by the former DMPED DOD to a Super Bowl party in Sosúa, the Deputy Fire Chief informed FEMS that he had scheduled training for Sosúa fire officials. This resulted in the Deputy Fire Chief obtaining authorized paid leave from FEMS for his time in Sosúa. He then traveled to Sosúa, at District government expense (costing more than \$800 for his airfare and *per diem*), accepted a free meal and transportation from Sosúa officials, and accepted a plaque from Dajabon officials. Therefore, he violated the DPM by accepting gifts from prohibited sources because Sosúa and Dajabon were attempting to obtain property from the District, specifically FEMS.

Accordingly, the issues of whether the Deputy Fire Chief violated DPM § 1803.1 (a)(1) (Using public office for private gain); § 1803.1 (a)(2) (Giving preferential treatment to any person); § 1803.1 (a)(3) (Impeding government efficiency or economy); § 1803.1 (a)(4) (Losing complete independence or impartiality); § 1803.1 (a)(5) (Making a government decision outside official channels); § 1803.1 (a)(6) (Affecting adversely the confidence of the public in the integrity of government); § 1803.2 (A District government employee shall not solicit or accept, either directly or through the intercession of others, any gift from a prohibited source); and § 1803.6 (An employee shall not accept a gift, present, or decoration from a foreign government) are **SUBSTANTIATED**.

#### C. Property Disposal Specialist 1's Conduct

Property Disposal Specialist 1 told OIG investigators that she did not see the PDA for fire truck #S-194 and the ambulance before she filled out the Request for Excess Property form for Nonprofit 2, so she made up the total acquisition cost for each vehicle. The PDA, however, was available and contained the actual acquisition cost of fire truck # S-194. Although the PDA instruction form also states that if "the actual acquisition cost is unknown, [the appropriate person should] provide the most intelligent and accurate estimate possible," Property Disposal Specialist 1 made no attempt to locate the June 2006 PDA form that showed fire truck #S-194's value and instead knowingly entered false information on the form that was material to the transaction. Because the Property Disposal Specialist 1 is a Career Service employee, she may be disciplined under DPM § 1603.3(d), which states that "[a]ny knowing or negligent material misrepresentation on other document given to a government agency" constitutes cause for disciplinary action.

With regard to fire truck # S-104, Property Disposal Specialist 1 was instructed by the former OCP Chief of Staff to contact the Nonprofit 1 Co-Founder and assist with his Federal Surplus Program application. Property Disposal Specialist 1 explained that she was not aware that Nonprofit 1 had expressed an interest in a fire truck and ambulance when she submitted the application paperwork to former OCP Chief of Staff for approval. As part of the application process, however, a site visit was conducted to determine how and where the organization was to use the surplus property. Property Disposal Specialist 1 must have known at the time of Nonprofit 1's application that it was the designated nonprofit to serve as a conduit for the fire truck and ambulance donation because she conducted a site visit at Nonprofit 1. In addition, the site visit she conducted was merely a *pro forma* act because it was clear from documentation

submitted with Nonprofit 1's application that it had no intention of using either vehicle. Instead, the documentation submitted by Nonprofit 1 clearly stated its intention to provide the vehicles to Sosúa, Dominican Republic.

Therefore, the issues of whether Property Disposal Specialist 1's conduct violated DPM § 1803.1 (a)(2) (Giving preferential treatment to any person); § 1803.1 (a)(5) (Making a government decision outside official channels); and § 1803.1 (a)(6) (Affecting adversely the confidence of the public in the integrity of government) are **SUBSTANTIATED**.

#### D. The former EOM GC's Conduct

The former EOM GC had both a personal and previous professional relationship with the Company Owner, which he should have disclosed to former Attorney General 1 when former Attorney General 1 asked him to conduct a review of the attempted donation to Sosúa. Instead, the former EOM GC conducted the inquiry, which included an interview of the Company Owner in which he failed to ask basic questions about the Company Owner's involvement in the donation and District government business. The former EOM GC's conflicts gave at least the appearance of preferential treatment toward the Company Owner and called into question the integrity and objectivity of the investigation, which concluded that the donation was "legal and totally proper."

Therefore, the issue of whether the former EOM GC violated § 1803.1 (a)(2) (Giving preferential treatment to any person) is **SUBSTANTIATED**.

### **RECOMMENDATIONS**

Based on the results of this investigation, the OIG recommends that:

- FEMS address the conduct of the Deputy Fire Chief with appropriate administrative action, as permitted under DPM § 1601.9 (a);
- OCP address the conduct of Property Disposal Specialist 1 with appropriate administrative action;
- OCP, DMPED, and FEMS ensure that all employees are trained appropriately regarding the District's rules on the disposition of surplus property;
- FEMS update its Apparatus Replacement Guidelines, if appropriate, and train all employees responsible for apparatus replacement to follow established Apparatus Replacement Guidelines;
- DMPED and FEMS ensure that all personnel with responsibilities that include reviewing and/or approving requests for travel, training, and/or *per diem* are properly trained to scrutinize such requests and held accountable for any failure to do so;

- OCP properly train all personnel with responsibilities that include reviewing requests for the disposition and/or donation of another agency's surplus District property, and hold such personnel accountable for any failure to do so;
- OAG ensure that all personnel with responsibilities that include reviewing requests from other District agencies to donate District government property be properly trained on the applicable regulations, procedures, and laws, and be required to analyze both the source and status of the property to be donated, as well as the justification for the donation request, and be held accountable for any failure to do so; and
- Steps be taken to ensure that all EOM, DMPED, FEMS, OCP, and OAG employees receive regular and appropriate conflicts of interest training.

*April 14, 2011*