



# INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF CORRECTION (DOC) and INDIANA  
FINANCE AUTHORITY (IFA)  
TITLE: THEFT OF STATE PROPERTY (UNSUBSTANTIATED)  
CASE ID: 2019-02-0027  
DATE: July 16, 2020

*Inspector General Staff Attorney Kelly Elliott, after an investigation by Special Agent Mark Mitchell, reports as follows:*

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch of state government. Ind. Code §4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state workers. Ind. Code §4-2-7-3. The OIG is also authorized to assist other law enforcement efforts and coordinate investigations. Ind. Code §4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in the state government. Ind. Code §4-2-7-3(2).

## **I. Complaint**

On February 4, 2019, the OIG received a complaint alleging theft of state property at a facility (Facility) utilized by the Indiana Department of Correction (DOC). OIG Special Agent Mark Mitchell investigated the matter.

## **II. Investigations by Other State Agencies**

DOC conducted an internal investigation into the theft allegations. Special Agent Mitchell reviewed a copy of DOC's internal investigative report. He learned that an outside organization (Organization) contracts with DOC to provide services at the Facility. In 2017, the State authorized

the replacement of state-owned HVAC rooftop units (RTUs) from the Facility. DOC concluded in its report that four individuals employed by the Organization illegally obtained and sold the used RTUs that the State removed and replaced at the Facility. The Organization sold the used RTUs to scrapping facilities. The Organization reported to DOC that the Organization deposited the funds received for the used RTUs into various Organization accounts. The Organization reported that it provided some of the funds to the Organization's employees as a Christmas bonus.

DOC found that the Indiana Finance Authority (IFA), the state agency that owns the Facility, authorized the Organization to scrap the used RTUs. DOC concluded that no state employees (only the Organization's employees) were involved with the alleged theft or illegal sale of the RTUs.

The Indiana State Police (ISP) also investigated the theft allegations. Special Agent Mitchell reviewed a copy of ISP's investigative report into the theft allegations. ISP found that IFA, the owner of the Facility, contracted with a contractor (Contractor) to replace the RTUs at the Facility. The Organization reported to ISP that prior to the project beginning, IFA approved of the Organization taking possession of the used RTUs and scrapping them. The Organization indicated that the practice of scrapping used items or equipment from the Facility had been in place for some time. The Organization reported that it generally used the funds received for scrapping items or equipment for maintenance needs at the Facility. ISP referred the matter to the OIG.

### **III. OIG Investigation**

During the course of Special Agent Mitchell's investigation, he interviewed state employees with various state agencies and other witnesses. He also reviewed documents related to the replacement of the RTUs at the Facility, including emails, contracts, reports and policies.

Special Agent Mitchell learned that IFA owns the Facility and leases it to DOC. IFA is responsible for completing capital projects at the Facility. In 2017, IFA authorized the replacement of RTUs from the Facility as part of a capitol project (the Project). IFA contracted with an engineering firm (Engineering Firm) to draft the specifications for the Project and oversee the bidding and award process for the contract. The Engineering Firm also conducted meetings regarding the Project with IFA, the Organization and the contractors who bid on the Project. In 2017, IFA awarded the Contractor the contract for the Project.

Agent Mitchell reviewed the contract for the Project. The contract incorporates a project manual that contains specifications for the Project. The Engineering Firm drafted the project manual and issued it to the contractors to aid them in developing their bids on the Project. After IFA awarded the contract for the Project to the Contractor, the project manual became part of the formal contract.

The project manual for the Project refers to IFA as “Owner.” The project manual states, “Except for items or material indicated to be reused, salvaged, reinstated, or otherwise indicated to remain Owner’s [IFA] property, demolished materials shall become Contractor’s property and shall be removed from Project site. . . . Check with [O]wner [IFA] prior to removal to verify if [O]wner [IFA] wants demolished [m]aterial.” Accordingly, the contract provided the Contractor ownership of the RTUs removed from the Facility during the Project unless IFA requested otherwise.

Agent Mitchell learned that the Engineering Firm drafted an addendum to the project manual (Addendum) and provided it to the bidding contractors. The Addendum made various modifications to the project manual. Specifically, the Addendum states that the used RTUs were to “become the property of the Owner. Owner will provide a trailer to place old [RTUs] from the

crane pick.” As such, it appeared that the contract for the Project, through the Addendum, provided IFA ownership of the used RTUs removed from the Facility during the Project.

Special Agent Mitchell received information from the Engineering Firm regarding the Addendum. An engineer with the Engineering Firm who assisted with the project stated that the Engineering Firm drafted the Addendum and the intent was that the used RTUs would belong to the Organization, not IFA. The Engineering Firm noted that they mixed-up the two entities in the Addendum, using “Owner” incorrectly. The Engineering Firm stated the contractor is responsible for removal and disposal of old equipment and it costs a contractor money to haul off such equipment. The Engineering Firm stated the Organization offered to take the used equipment and provide a trailer for the equipment. The Engineering Firm documented the Organization’s offer to provide a trailer for the used RTUs in the Addendum (“Owner [Organization] will provide a trailer to place old [RTUs] . . .”).

Special Agent Mitchell looked at various meeting notes for the Project as well, including pre-bid meeting notes, pre-award meeting notes and pre-construction meeting notes. Different personnel at the Engineering Firm drafted the three sets of meeting notes and representatives from IFA and the Organization were present for all three meetings. Special Agent Mitchell found that the Engineering Firm referred to the Organization as “Owner” in some of the meeting notes and as the Organization in other meeting notes he reviewed.

Through a Memorandum of Understanding, the Indiana Department of Administration (IDOA) assists IFA with the management of capital projects at the Facility. An IDOA employee (IDOA Employee) assists in the oversight of capital projects at the Facility. Special Agent Mitchell interviewed the IDOA Employee and discussed the replacement of the RTUs at the Facility. The IDOA Employee explained that when the State replaces this type of equipment, it is normally the

contractor's responsibility to dispose of the construction waste generated from replacing the equipment.

The IDOA Employee reviewed the Addendum with Special Agent Mitchell. He stated that the Addendum appeared to provide IFA ownership of the used RTUs, but this was not his understanding of what took place. He stated it was his understanding that the Contractor retained ownership of the RTUs and later relinquished ownership of the RTUs to the Organization. He explained that he was not aware of IFA acquiring ownership of the RTUs.

Special Agent Mitchell learned that DOC also occupies other facilities owned by IFA. The IDOA Employee stated that IFA/IDOA would inform DOC of projects that IFA would need to complete at such facilities. He said that it is not unusual for DOC to take construction waste from a project so that it can be recycled. He stated that he did not believe DOC was involved with the replacement of the RTUs at the Facility.

Special Agent Mitchell interviewed an IFA contract consultant (IFA Contract Consultant) who served as the project manager for the replacement of the RTUs at the Facility. The IFA Contract Consultant stated that a director with the Organization (Director)<sup>1</sup> asked him who owned the used RTUs removed from the Facility during the Project. The IFA Contract Consultant stated he told the Director that the used RTUs belonged to the Contractor.<sup>2</sup> He stated the Director inquired with him about salvaging and scrapping parts of the used RTUs. He stated he told the Director that this was between the Organization and the Contractor. He explained that he never saw any issues with the Organization scrapping the used RTUs.

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<sup>1</sup> The Director served as an employee with the Organization.

<sup>2</sup> This is not consistent with either the project manual or the Addendum but is consistent with IDOA's understanding.

Agent Mitchell interviewed the Director. The Director stated that after the Project began, he and the Contractor verbally agreed to allow the Director/Organization to maintain the used RTUs at the Facility and scrap them for parts. He noted that the Contractor did not want to transport the RTUs to a scrapping facility. He stated he did not sign any formal agreement with the Contractor regarding the removal of the RTUs. The Director stated the IFA Contract Consultant was aware of this arrangement and was fine with it. The Director stated that he also told a DOC employee (DOC Employee) about this arrangement regarding the used RTUs. He stated the DOC Employee asked him to keep the best two used RTUs for DOC, which the Director stated he did.

Agent Mitchell interviewed the DOC Employee that the Director referenced in his interview. The DOC Employee is involved with projects at DOC facilities. The DOC Employee explained that IFA did not notify him that they were replacing the RTUs at the Facility but noted that the IFA Contract Consultant is not required to consult with him about projects IFA is conducting at the Facility. He stated that there are no formal guidelines in place between IFA, IDOA and DOC on how IFA will carry out projects at the Facility. He stated that usually all parties involved have an informal conversation about the project, but in this case, none of that occurred.

The DOC Employee explained that when he and his staff replace a RTU at a DOC facility, they assess the condition of the old unit and decide if the unit can be refurbished or should be recycled. He stated that either way, he and his staff complete the required documentation for state surplus. He explained that if DOC recycles a RTU, DOC puts the money received for the recycled unit into DOC's Recycle Account, which is a non-reverting account.<sup>3</sup> The DOC Employee

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<sup>3</sup> Special Agent Mitchell reviewed documentation related to the removal of a RTU at DOC's Madison Correctional Facility in 2019. He found that DOC recycled the used RTU and received \$2,826 from a scrapping facility for the unit. DOC deposited the funds for the used RTU into the "IDOC Recycle Account."

indicated that all RTUs have residual value and he has an interest in recycling or possibly refurbishing the units.

Ind. Code §5-22-21 provides for the disposition of state surplus personal property owned by a governmental body that is a *state agency*. The statute requires the IDOA Commissioner to adopt procedures for the disposition of state surplus property. IDOA's State-Owned Surplus Property Procedure Instructions provide guidelines for the disposition of surplus property owned by a state agency.<sup>4</sup> Additionally, Ind. Code §5-22-22 provides guidelines for the disposition of surplus personal property owned by most governmental bodies.<sup>5</sup>

Although Ind. Code §5-22 provides guidance for the disposition of surplus personal property owned by a state agency or governmental body, Ind. Code §5-1.2-3-1 states that IFA is a body politic and corporate and not a state agency. Furthermore, Ind. Code §5-1.2-1-3 states, in part,

Any general, special, or local law that is made applicable to a particular entity by referring an officer or office of the state, an agency, a state agency, an authority, a board, a commission, a committee, a department, a division, a bureau, an instrumentality, an institution, an association, a service agency, a body corporate and politic created by statute, or any other entity of the executive, including the administrative, department of state government, or a similar reference or term, is not applicable to [IFA], unless the reference is made specifically applicable to or in the name of [IFA] or to or by naming any statutes that are specific to [IFA] . . . .

Ind. Code §5-1.2-1-3 provides twelve statutes specifically applicable to IFA;<sup>6</sup> however, Ind. Code §5-22 is not listed as a statute applicable to IFA. Accordingly, IFA is not required to adhere to the requirements of Ind. Code §5-22 regarding the disposition of surplus personal property or IDOA's State-Owned Surplus Property Procedure Instructions.

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<sup>4</sup> IDOA's current State-Owned Surplus Property Procedure Instructions can be found at: <https://www.in.gov/idoa/files/State%20Surplus%20Disposition%20Agent%20Manual%201%202017.doc>.

<sup>5</sup> Ind. Code §5-22-22(c) provides a number of exceptions to the statute.

<sup>6</sup> Ind. Code §5-1.2-1-3 lists the following twelve statutes specifically applicable to IFA: Ind. Code §§4-2-6, 5-3, 5-10, 5-10.1, 5-10.2, 5-10.3, 5-14-1.5, 5-14-3, 5-15, 5-19, 34-13 and 34-30-9.

#### **IV. Conclusion and Recommendation**

In conclusion, Special Agent Mitchell found insufficient evidence to substantiate allegations that the Organization's employees engaged in theft or otherwise illegally obtained and sold the used RTUs removed from the Facility during the Project. The Project's contract documents use inconsistent terminology regarding references to "Owner" with respect to who became the owner of the scrapped RTUs. The Engineering Firm provided that it mixed-up the Organization and IFA when it referenced "Owner" in the Addendum to the project manual but intended to provide ownership of the used RTUs to the Organization, not IFA. The Organization, however, indicated that it requested permission from the Contractor to acquire ownership of the used RTUs after the Project commenced. Nonetheless, Special Agent Mitchell found that IFA approved of the Organization's possession and subsequent disposal of the used RTUs to scrap facilities. Special Agent Mitchell also found no evidence to indicate that any state employee or state contractors engaged in any wrongdoing as it relates to the disposition of the RTUs. As a result, the OIG is closing this matter for insufficient cause.

Although Special Agent Mitchell found no violations of the Code of Ethics or criminal code, the OIG identified inconsistencies in the handling and disposition of construction waste from the Facility. Neither IFA nor IDOA initially notified DOC of the Project or the availability of the used RTUs. The DOC Employee indicated that no formal process for notification exists; however, IDOA, IFA and DOC generally have informal conversations on construction projects, which did not occur for this Project.

Furthermore, in an effort to dispose of the units, IFA agreed to allow the Contractor and/or the Organization to obtain ownership of the RTUs and later approved of the Organization's disposition of the RTUs. As a result, the Organization received a financial benefit for scrapped



state property.<sup>7</sup> Although it appears that IFA found discarding the RTUs to be the most cost-effective option and the Organization used some of the funds from the scrapped RTUs for maintenance at the Facility, DOC may have been able to provide useful input on how to dispose of the property.

Accordingly, the OIG recommends that IFA provide adequate notice to the agency utilizing the property of any impending capital projects. This will allow the agency to provide input regarding taxpayer-financed property and provide the agency an opportunity to retain the benefits of recycled or repurposed equipment when IFA determines it is appropriate and in the best financial interests of the State. IFA also should accurately document who owns the property, who disposes of the property and how the property is disposed. Proper documentation of such transactions will help increase the public's confidence that IFA is making careful decisions about the disposition of state property and working to ensure that state property is being used to benefit the State and not a private company.

Furthermore, IFA is not currently bound by any particular policy, rule or law regarding disposition of its surplus property. Failure to operate by either policy or law creates opportunity for abuse or inconsistency. As such, IFA should consider implementing internal policies and procedures for the disposition of its surplus property.

Dated: July 16, 2020

APPROVED BY:



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Lori A. Torres, Inspector General

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<sup>7</sup>The Organization broke down the RTUs into individual parts to sell to two different scrapping facilities. Receipts for scrapped parts from June 2016 through October 2017 reflect a total paid of \$33,000. There was no effort made to determine exactly which receipts were for the scrapped RTUs. We assume, but have not determined, that all of the receipts represent funds received for scrapped state property, which may include more than just the RTUs.