



July 11, 2012

To: Finance and Administration Committee
From: Will Kempton, Chief Executive Officer
Subject: Limited Scope Review of Greater Southern California Towing, Inc.

Overview

The Internal Audit Department has investigated a complaint against Greater Southern California Towing, Inc., a contractor of the Orange County Transportation Authority under the Freeway Service Patrol program. Through limited review, the Internal Audit Department substantiated allegations that Greater Southern California Towing, Inc., regularly fails to compensate employees for time worked before and after scheduled shifts, in violation of California Labor Law. In addition, Greater Southern California Towing, Inc., violates state and federal laws by making cash payments that are not reported or subjected to payroll and income taxes.

Recommendation

Direct management to take appropriate action with regard to Greater Southern California Towing, Inc., and review contract language to ensure that appropriate safeguards are included.

Background

The purpose of the Freeway Service Patrol (FSP) program is to provide for the rapid clearing of traffic lanes blocked by disabled vehicles, minor accidents, and congestion-causing debris. FSP tow trucks help stranded motorists get back on the road by providing assistance such as a jump start and/or a gallon of gas, changing a flat tire, or repairing a cooling system hose. The FSP operates on selected freeway segments referred to as service beats. The Orange County Transportation Authority (OCTA) contracts with tow truck operators to provide Orange County FSP services on the service beats.

On April 17, 2012, the Internal Audit Department (Internal Audit) received a complaint alleging Greater Southern California Towing, Inc. (GS Towing), was violating wage laws.

Internal Audit contacted GS Towing and scheduled visits to interview management and review selected records. Management was cooperative and responsive to all requests.

Discussion

Interviews and testing of selected records confirmed that employees are not paid for travel time to and from their assigned beats or time spent inspecting, fueling, and washing their assigned vehicles. Instead, management indicated that employees are paid a monthly bonus of \$250 (or less, for part-time employees) in lieu of paying for this time.

Internal Audit also identified six instances in which an employee's payroll check did not include payment for weekend shift hours in excess of eight hours per day. In this instance the employee was paid in cash for the excess hours at the regular hourly rate with no payroll deductions.

California Labor Code requires that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Federal and state law requires employers to withhold taxes from employees' paychecks and to pay any liability for the employer's portion of social security and Medicare taxes.

Under Agreement No. C-9-0719 and Agreement No. C-0-1577, GS Towing warrants that it will comply with all applicable federal, state, and local laws.

Internal Audit recommended that OCTA management take appropriate action with regard to GS Towing and review contract language to ensure that appropriate safeguards are included.

OCTA management noted that GS Towing has subsequently implemented a time-keeping system and procedures and issued payment of back wages to employees. OCTA management will require GS Towing to report its violations to the United States Department of Labor and the California Labor Commissioner through the California Division of Labor Standards Enforcement. OCTA management also agreed to work with the Contracts Administration and Materials Management Department to review contract terms and make appropriate changes for future procurements.

Summary

Based on the results of an investigation and limited scope review, Internal Audit recommends that OCTA management take appropriate action with regard to GS Towing and review contract language to ensure that appropriate safeguards are included.

Attachment

- A. Limited Scope Review of Greater Southern California Towing, Inc.

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ORANGE COUNTY TRANSPORTATION AUTHORITY INTERNAL AUDIT DEPARTMENT



Limited Scope Review of Greater Southern California Towing, Inc.

Reissued June 27, 2012



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**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Limited Scope Review of Greater Southern California Towing, Inc.
June 27, 2012**

Contents

CONCLUSION	1
BACKGROUND	1
OBJECTIVES, SCOPE AND METHODOLOGY.....	2
OBSERVATION, RECOMMENDATION, AND MANAGEMENT RESPONSE	3
Violations of Laws and Regulations	3

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Limited Scope Review of Greater Southern California Towing, Inc.
June 27, 2012**

CONCLUSION

The Internal Audit Department (Internal Audit) has investigated a complaint against Greater Southern California Towing, Inc. (GS Towing), a contractor of the Orange County Transportation Authority (OCTA) under the Freeway Service Patrol (FSP) program. Through limited review, Internal Audit substantiated allegations that GS Towing regularly fails to compensate employees for time worked before and after scheduled shifts, in violation of California Labor Law. In addition, GS Towing violates state and federal laws by making some cash payments to employees that are not reported or subjected to payroll and income taxes.

Internal Audit recommended that OCTA management take appropriate action with regard to GS Towing and review contract language to ensure that appropriate safeguards are included.

BACKGROUND

Fraud Hotline Administration

Internal Audit administers the OCTA Fraud Hotline (Hotline). The Hotline is operated by a third party and provides both a toll free phone number and an internet site for filing anonymous complaints of fraud, waste, or abuse. Occasionally, Internal Audit receives a complaint directly and will record the complaint in the Hotline system so that it is tracked and recorded along with all other complaints received.

All complaints are reviewed by Internal Audit to determine whether an investigation can be performed and, if so, by whom. When appropriate, Internal Audit will investigate and determine whether the allegation can be substantiated. In the course of conducting these investigations, Internal Audit may identify control weaknesses or opportunities to enhance existing policies and procedures. Findings and recommendations resulting from these investigations are incorporated into limited scope review reports that include management corrective action. Like any other Internal Audit report, recommendations are tracked through to implementation.

On April 17, 2012, Internal Audit received a complaint alleging GS Towing's violation of wage laws.

Internal Audit contacted GS Towing and scheduled visits to interview management and review selected records. Management was cooperative and responsive to all requests.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Limited Scope Review of Greater Southern California Towing, Inc.
June 27, 2012**

FSP

The purpose of the FSP program is to provide for the rapid clearing of traffic lanes blocked by disabled vehicles, minor accidents, and congestion-causing debris. FSP tow trucks help get stranded motorists back on the road by providing a jump start and/or a gallon of gas, changing a flat tire, or repairing a cooling system hose. OCTA administers the FSP program, and California Highway Patrol (CHP) provides program oversight, dispatch, and field services whenever law enforcement is required.

The FSP operates on selected freeway segments referred to as service beats. OCTA contracts with operators to provide Orange County FSP services on the service beats.

The FSP tow truck drivers are required to logon and logoff for their shifts in the FSP Tracking and Data Collection Solution system (FSP tracking system).

OBJECTIVES, SCOPE AND METHODOLOGY

The objective of the investigation was to determine whether GS Towing complied with labor and wage laws, based on interviews and reviews of payroll and logon and logoff documentation from the FSP tracking system. The scope of the investigation was limited to payroll periods from January 16, 2012 through March 25, 2012.

In conducting the investigation and limited scope review, Internal Audit employed the following methodology:

- Interviewed GS Towing's president and lead driver;
- Reviewed Agreement No. C-9-0719 and Agreement No. C-0-1577 between OCTA and GS Towing;
- For five payroll periods, judgmentally selected a sample of five drivers per payroll period. For each selected driver, reviewed GS Towing's payroll records in conjunction with the FSP tracking system report of logon and logoff data for the drivers; and
- Reviewed a sample receipt of cash payment made without payroll tax deductions.

This report is the result of an investigation into a complaint received by Internal Audit, and does not represent an audit conducted in accordance with Generally Accepted Government Auditing Standards.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Limited Scope Review of Greater Southern California Towing, Inc.
June 27, 2012**

OBSERVATION, RECOMMENDATION, AND MANAGEMENT RESPONSE

Violations of Laws and Regulations

Interviews with GS Towing management confirmed that employees are not paid overtime for travel time to and from their assigned beats or time spent inspecting, fueling, and washing their assigned vehicles. Instead, management indicated that employees are paid a monthly bonus of \$250 (or less, for part-time employees) in lieu of paying for overtime.

Employees are required to retrieve tow trucks at the GS Towing yard and arrive at their assigned beat location by their assigned shift start time. While the employees are not compensated for time spent prior to their assigned start time, it is recorded in the FSP tracking system because the employees logon to the system when they get into the vehicle. At the end of the shift the employee will logoff the system before leaving their beat. After logging off, the employee must drive back to the yard, fuel the vehicle, and on a weekly basis, wash the vehicle. This time is not recorded in the FSP tracking system.

Internal Audit selected five drivers from each of five payroll periods and calculated hours worked based on the system logon and logoff times. The hours worked were then compared to the payroll registers. This test confirmed that employees are not compensated for time spent working outside of their shift hours. The value of the underpaid overtime typically ranges from \$100 to \$200 per employee, per pay period. This estimate does not include hours worked after the end of each shift because these hours are not recorded in the system.

Internal Audit also identified six instances in which an employee's payroll check did not include payment for weekend shift hours in excess of eight hours per day. Management explained that this employee was compensated for the first eight hours through the normal payroll process and in cash for the additional hours. The cash payment was made at the employee's regular hourly rate and is not reported or subjected to required payroll deductions. Internal Audit obtained and reviewed a sample receipt for one of these transactions and confirmed the practice.

Under Agreement No. C-9-0719 and Agreement No. C-0-1577, GS Towing warrants that it shall comply with all applicable federal, state, and local laws.

California Labor Code Section 510 requires that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be

ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Limited Scope Review of Greater Southern California Towing, Inc.
June 27, 2012

compensated at the rate of no less than twice the regular rate of pay for an employee.

Federal and state law requires employers to withhold taxes from employees' paychecks. Each time wages are paid, employers must withhold certain amounts for income tax, social security tax, and Medicare tax. Federal law also requires employers to pay any liability for the employer's portion of social security and Medicare taxes.

Recommendation:

Internal Audit recommends that OCTA management take appropriate action with regard to GS Towing and review contract language to ensure that appropriate safeguards are included.

Management Response (Transit Division):

OCTA management recommends that GS Towing be required to implement a time keeping system and ensure that all employees are properly paid for hours worked in compliance with state, federal, and local laws. Furthermore, GS Towing should be required to report its violations to the United States Department of Labor (US DOL) and the California Labor Commissioner through the California Division of Labor Standards Enforcement (DLSE) and seek assistance to calculate back wages due past and present employees and pay back wages, penalties, and interest as deemed appropriate by either the US DOL or the DLSE. Letters to the US DOL and the DLSE should be sent certified mail by August 24, 2012. GS Towing should keep OCTA apprised of the status of the inquiry.

GS Towing implemented a time keeping system and procedures on June 5, 2012. On June 21, 2012, GS Towing issued payment of back wages in the gross amount of \$48,383.50 with net pay of \$24,085.73 to 21 employees. Based on the method used to calculate the overtime due and the amount paid to each employee, OCTA cannot verify that all back wages have been paid and cash payments have been reported and would defer to the requested evaluation by US DOL and DLSE to ensure that GS Towing is compliant.

Additionally, OCTA management will work with the Contracts Administration and Materials Management Department to review contract terms and make appropriate changes for future procurements.