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U.S. Department of Energy  
Office of Inspector General  
Office of Audit Services

# Special Inquiry

## Review of Allegations Regarding Hiring and Contracting in the Office of Energy Efficiency and Renewable Energy

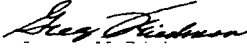
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**Department of Energy**  
Washington, DC 20585

September 22, 2010

MEMORANDUM FOR THE SECRETARY

FROM:   
Gregory H. Friedman  
Inspector General

SUBJECT: INFORMATION: Special Inquiry: "Review of Allegations Regarding Hiring and Contracting in the Office of Energy Efficiency and Renewable Energy" Report Number: OAS-SR-10-04

INTRODUCTION

In April 2010, the Office of Inspector General (OIG) began receiving multiple allegations concerning hiring and contracting practices within the Office of Energy Efficiency and Renewable Energy (EERE). These allegations included:

1. Improprieties in the hiring of a contract employee to a senior Federal career position, including concerns that the contract employee was pre-selected or otherwise had an unfair advantage;
2. Performance of inherently governmental duties, including the supervision of Federal employees, by the same contract employee; and,
3. Award of work to a contractor without adequate competition.

Although a number of other allegations with similar concerns were received, the OIG chose to focus its attention on those outlined above because of their overall importance to the integrity of the EERE mission, especially its role in the implementation and execution of the Department of Energy's responsibilities under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Consequently, we initiated a fact-finding inquiry into these matters. To this end, we interviewed 31 current and former Department employees, including issue area specialists, and identified and reviewed applicable Federal regulations. We also analyzed over 250,000 emails, the results of which yielded evidence, presented in our report, pertaining to the specific allegations included in the scope of our inquiry. Our analysis of emails also disclosed another area of concern that is outlined in this report.

RESULTS OF SPECIAL INQUIRY

We concluded that the allegation related to pre-selection of a senior EERE official was substantiated. Our inquiry identified a number of actions by management officials that contributed to a concern expressed by many in the EERE career workforce that the contract employee in this case performed a number of inherently governmental functions. We were

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unable to substantiate the allegation regarding lack of adequate competition in contractor work awards. We did, however, find that the contract employee developed a statement of work that was tasked to the contractor for which he worked. This apparent conflict provided the opportunity for inappropriate manipulation of contract taskings to the financial benefit of the contractor's employer. While this potential existed, we did not substantiate that the related work was actually overstated. Detailed results of our inquiry are contained in the Attachment.

#### Federal Position Selection Process

We identified a number of circumstances surrounding the hiring action that were troubling, actions that understandably led the complainants to believe, and for us to conclude, that the contract employee was, in fact, pre-selected. Evidence gathered from a number of sources, including the Federal selecting official, demonstrated that the contract employee was granted preferences and advantages that were not granted to other applicants. For example:

- The selecting official expressed specific intentions to make the contract employee a Federal employee several months before the contract employee's eventual appointment to the position;
- The contract employee was provided specific knowledge about the applicable position in advance of the general public. The contract employee actively participated in key aspects of the hiring action such as preparing the Position Description and developing questions to be answered during the application/interview process for the position for which the contract employee was ultimately hired; and,
- A memorandum justifying the selection of the contract employee for a Federal position stated that the contract employee was currently serving as the selecting official's deputy; was responsible for all operations in the program; and, oversaw all project implementation for the program.

When interviewed, the selecting official told us that the contract employee was not pre-selected and that a number of other candidates were considered. The selecting official ultimately acknowledged that the contract employee's involvement in the hiring action could be seen as an unfair advantage and expressed the view that, in hindsight, the contract employee should have been excluded from any action associated with the hiring process.

Based on the fact pattern in this case, we are referring the matter regarding pre-selection to the U. S. Special Counsel (Special Counsel) for a determination as to whether prohibited personnel practices should be prosecuted under the Special Counsel's authority. Additionally, complainants and other witnesses raised concerns about the selection of other contractor employees by the same selecting official for Federal positions within EERE. We are forwarding these matters to the Special Counsel as well.

### Contract Employee Performing Inherently Governmental Duties

We found conflicting evidence regarding complaints that the contract employee improperly performed inherently governmental duties. As with the selection process, we identified factors that contributed to a belief by the complainants and others that the contract employee was effectively functioning as a Federal employee. In particular, our inquiry established that the contract employee was actively involved in the management of the applicable EERE program by participating in high level management meetings where policy and strategic decisions were made; assisting in the development and implementation of policy-oriented program goals; participating actively and intimately in the hiring process for new employees; and, developing performance standards for Federal employees. We placed substantial weight on the fact that the individual was commonly referred to as the "deputy" by the Acting Program Manager, as noted previously. All-in-all, these circumstances gave rise to a belief held by many career EERE employees that the contract employee was performing inherently governmental duties.

In responding to our interview questions, various witnesses, including members of EERE senior management, expressed a very different view. They asserted that the contract employee was providing consulting services and all program decisions were made by Federal employees; tasks performed by the contract employee were ultimately approved by a Federal employee; and, any "direction" the contract employee communicated to Federal employees was from the Acting Program Manager rather than the contract employee. However, it was clear that the extent of the contract employee's responsibilities contributed to the perception that the complainants and witnesses had concerning inherently governmental duties.

### Improper Awarding of Work to a Contractor without Competition

We were unable to substantiate the allegation that work was improperly awarded to a contractor without competition. Evidence disclosed that the questioned work was awarded to a current contractor through the modification of existing task orders. The work appeared to be within the scope of the existing contract and the decision to task the work to the contractor was a matter within management's discretion. We did, however, identify an internal control weakness that permitted the subject of the allegation regarding pre-selection to develop a statement of work for additional work that was ultimately assigned to the contractor for which the employee worked. This control weakness provided the opportunity for the contract employee or similarly situated employees to manipulate contract taskings to the financial benefit of their own employer. However, we did not identify any inappropriate escalation of work in this case.

### Other Matters

In addition to the specific allegations addressed during our inquiry, we also found evidence of a disturbing practice related to Federal participation in support service contractor hiring. Specifically, we identified situations in which EERE officials requested contractors to hire specific individuals and assign them to support its contracts. In other cases, EERE requested that contractors hire individuals until they could be brought on as permanent Federal employees. In some instances, the individuals were actually hired by the support service contractor, while in another, the contractor resisted attempts by Federal officials to specify which employees it hired.

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In a May 2010 email, a procurement official, after learning of these practices, cautioned a senior EERE manager that staffing is the responsibility of the prime contractor and that Federal employees should not participate in interviewing potential contract employees.

### WORK ATMOSPHERE

Our inquiry focused on identifying the facts surrounding specific allegations concerning an individual contract employee and contractor. In doing so, we were mindful that these activities occurred during EERE's early efforts to implement the Recovery Act. The Recovery Act significantly expanded EERE programs and funding, resulting in the need to immediately hire a large number of Federal employees and expand the use of contractors in implementing EERE's programs. Several witnesses discussed the pressure EERE was under to implement the Recovery Act programs and expressed their belief that this pressure led to the Program's reliance on less than optimal Federal hiring and contracting practices. Additionally, the selecting official in this case was new to the Federal government and claimed to be unfamiliar with Federal rules and regulations for hiring of employees.

Because of the significance of the Recovery Act and the relevance of the Department's hiring and contracting practices to the success of the Recovery Act's energy components, the Department should take prompt action to ensure that the issues raised in our report are thoroughly reviewed and addressed. We have made several recommendations designed to help improve the integrity of the hiring and contractor management process. Due to the nature of this report, it was not formally coordinated with management prior to release. Management's formal comments, or management decision on our recommendations, will be appended to the report when received.

Consistent with the requirements of the Inspector General Reform Act of 2008, the information contained in this report, in an appropriate format, will be made publicly available.

Any request for release of the details in this matter will be handled by the OIG in accordance with the Freedom of Information Act (Title 5, U.S.C. Section 552) and the Privacy Act (Title 5, U.S.C. Section 552a).

cc: Deputy Secretary  
Chief of Staff  
General Counsel  
Chief Human Capital Officer  
Director, Office of Management

Attachment

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~~OFFICIAL USE ONLY~~**SPECIAL INQUIRY INTO EERE RELATED ALLEGATIONS**

Beginning in April 2010, the Office of Inspector General (OIG) received multiple allegations concerning hiring and contracting within the Office of Energy Efficiency and Renewable Energy (EERE). These allegations included:

1. Improprieties in the hiring of (b)(6),(b)(7)(C) a contract employee, to a senior Federal career position, including concerns that he was pre-selected or otherwise had an unfair advantage;
2. Performance of inherently governmental duties, including the supervision of Federal employees, (b)(6),(b)(7)(C) while a contract employee; and,
3. Award of work to a contractor, New West Technologies, LLC (New West Technologies) without adequate competition.

Although a number of other allegations with similar concerns were received, the OIG chose to focus its attention on those outlined above because of their overall importance to the integrity of the EERE mission. Consequently, we initiated a fact-finding inquiry into these matters. To this end, we interviewed 31 current and former Department employees, including issue area specialists; analyzed over 250,000 emails; and identified and reviewed applicable Federal laws and regulations.

We concluded that the allegation of pre-selection (b)(6),(b)(7)(C) substantiated. We also identified a number of actions by management officials that contributed to a perception held by many in the EERE career workforce that (b)(6),(b)(7)(C) a number of inherently governmental functions while he was a contract employee. While we did not substantiate the allegation regarding the lack of competition, we discovered that other management actions contributed to an atmosphere in which EERE work tasks assigned to a support service contractor could have been improperly manipulated.

Our report presents email evidence that pertain to the specific allegations included in the scope of our inquiry. Our analysis of emails also disclosed another area of concern related to Federal interference in the hiring of support service contractor employees that is outlined in this report.

**Improprieties in the Hiring of a Contract Employee**

Complainants alleged that there were improprieties in the hiring of (b)(6),(b)(7)(C) a career Federal position, noting concerns that he was pre-selected or otherwise had an unfair advantage. Specifically, it was alleged that (b)(6),(b)(7)(C) Office of Weatherization and Intergovernmental Program (OWIP), EERE, (b)(6),(b)(7)(C) a career Federal position and had not followed standard hiring practices.

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(b)(6),(b)(7)(C) a position as (b)(6),(b)(7)(C)  
 (b)(6),(b)(7)(C) OWIP on April 25, 2010. In this position, he provided program direction for the Energy Efficiency and Conservation Block Grant (EECBG) Program. On June 21, 2010, (b)(6),(b)(7)(C) OWIP during (b)(6),(b)(7)(C)  
 (b)(6),(b)(7)(C) Prior to beginning his Federal service, (b)(6),(b)(7)(C)  
 (b)(6),(b)(7)(C) New West Technologies, a contractor providing support services for EERE under contract DE-EE000002 with New West-Energetics Joint Venture, LLC (New West-Energetics), a joint venture between New West Technologies and Energetics Incorporated. From August 2009 until his appointment as a Federal employee in April 2010, (b)(6),(b)(7)(C) under Task 74 of the New West-Energetics contract, (b)(6),(b)(7)(C) as well as other senior EERE leadership.

(b)(6),(b)(7)(C) multiple positions within OWIP including:

- GS-301-14 Lead Energy Technology Program Specialist under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0031. This was a non-supervisory term appointment, not to exceed 3 years, to support American Recovery and Reinvestment Act (Recovery Act) activities. (b)(6),(b)(7)(C) tentatively offered this position, accepted the position, but then declined when he was offered a GS-301-15 position within OWIP.
- GS-301-15 Lead Energy Technology Program Specialist under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0028. This was a non-supervisory term appointment, not to exceed 3 years, to support Recovery Act activities. (b)(6),(b)(7)(C) tentatively offered this position, began negotiations, but then later declined and, instead, accepted a permanent (b)(6),(b)(7)(C) position advertised separately.
- (b)(6),(b)(7)(C) under Vacancy Announcement HO-10-DE-10-EE10-0028. This was a permanent Federal career position. (b)(6),(b)(7)(C) was selected and accepted this position.

The facts developed during our review substantiated the original allegation. We concluded that circumstances surrounding this hiring action were troubling and led the complainants and other witnesses, understandably, to the presumption that (b)(6),(b)(7)(C) pre-selected. In our opinion, (b)(6),(b)(7)(C) granted preferences and advantages which indicated that the hiring action was not fair and was inconsistent with the Office of Personnel Management and the Department of Energy's personnel procedures which required that all applicants receive fair opportunity. Our review identified the following key facts related to the (b)(6),(b)(7)(C) hiring action.

Intent to Hire

We found evidence that (b)(6),(b)(7)(C) as early as October 2009. During October/November 2009, (b)(6),(b)(7)(C) other contract employees, (b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C) without competition. (b)(6),(b)(7)(C) was evidenced by the following excerpts from emails (b)(6),(b)(7)(C)

- "Given the long time lead needed to hire folks into OWIP, would it be possible to hire the following folks as EJ's into the recovery team (so that they can be feds)? We're finding a lot of trouble with these contractors – because they want to and are capable of managing folks – but Feds hate that. I know you had 2 spots originally – can we push it up? I see very specific excellent spots (b)(6),(b)(7)(C) OWIP – they need to apply and be picked – and we just need them to be feds." (October 27, 2009 re: EJ Positions)
- "...I'd really like to make a few of my folks EJ's – as the hiring process is just so darned long. I'd like (b)(6),(b)(7)(C) EJ's – they will all apply for OWIP positions too but the process is long and there is no guarantee...." (November 2, 2009 email re: EJ Positions)
- "...we'd like to hire several EJ positions – see resumes attached and salary histories below. The HR process for hiring them into OWIP is just too slow. Particularly for (b)(6),(b)(7)(C) we need them to be Feds asap. How can we expedite this process?" (November 8, 2009 email re: EJ Positions)
- "...when are you both avail on friday to discuss some needed EJ positions for owip? This would be for (b)(6),(b)(7)(C) all of whom are crucial to the functioning of owip.....I need competent bodies now who can help..." (November 19, 2009 email re: EJ Positions)

Ultimately (b)(6),(b)(7)(C) was not successful in hiring (b)(6),(b)(7)(C) contractors into EJ positions. However, all (b)(6),(b)(7)(C) were eventually hired through vacancy announcements; (b)(6),(b)(7)(C) a career employee, and (b)(6),(b)(7)(C) term employees. Emails (b)(6),(b)(7)(C) suggest that (b)(6),(b)(7)(C) in specific roles and (b)(6),(b)(7)(C) this intent to him. Specifically:

- On December 23, 2009, forwarding an email announcing the opening of Vacancy Announcement ARRAHQ-10-DirHir-EE0-0031 for the GS-301-14 term position, (b)(6),(b)(7)(C) "I'm pretty sure you saw this, but I think this is the role for you :) happy applying!" (b)(6),(b)(7)(C) tentatively offered this position, but declined in favor of a GS-15 position.
- In March 2010, (b)(6),(b)(7)(C) tentatively offered the GS-301-15 term position announced under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0028. However, in a February 25, 2010, email (b)(6),(b)(7)(C) him from accepting that position based (b)(6),(b)(7)(C) that he would be selected for the permanent GS-301-15 position announced under Vacancy Announcement HQ-10-DE-10-EE10-0028. Specifically:

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- On February 24, 2010, (b)(6),(b)(7)(C) an email (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) the applications for this vacancy announcement (b)(6),(b)(7)(C) would (b)(6),(b)(7)(C) by the following Monday.
- On February 25, 2010, (b)(6),(b)(7)(C) email (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) the message, (b)(6),(b)(7)(C) if you can wait til mon I think that is prudent- once you are on this list will be the position we want for you. If we sign the other 0028 now then we'll have to clean up the 15 and 14 and will cause confusion."

In our judgment, the only reasonable conclusion one can draw here is that (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) the permanent position even before seeing the list of qualified candidates. Ultimately, (b)(6),(b)(7)(C) received and accepted an offer of the permanent GS-301-15 position. The "15 and 14" referred to in the email were the two term positions he was tentatively offered and declined.

#### Participation in Key Aspects of Hiring Action

We also found that as part of his duties (b)(6),(b)(7)(C) and the OWIP program, (b)(6),(b)(7)(C) not only had specific knowledge of the vacancies he applied for in advance of the general public, but actively participated in the hiring action. Specifically:

- (b)(6),(b)(7)(C) participated in the preparation of the Position Description and application questions for the position for which he was eventually hired as well as other positions for which he applied. He, therefore, had access to this information prior to other candidates, giving him a longer period to prepare his application. In fact, when he forwarded the position description and questions (b)(6),(b)(7)(C) for approval, he also forwarded the documents to his non-Department email;
- (b)(6),(b)(7)(C) assisted in the development of the questions that were to be used for interviews of the candidates competing for the permanent GS-15 position; and,
- (b)(6),(b)(7)(C) other nonpublic information about vacancy announcements for which he applied. For example, during the competition, (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) with the Certificate of Eligibles listing the candidates who were deemed qualified for the permanent GS-15 position for which he was ultimately selected. During this process, (b)(6),(b)(7)(C) other emails (b)(6),(b)(7)(C) concerning the status of the hiring action.

#### Justification of Selection

Finally, we found that the Human Resource professionals responsible for the personnel action in question raised concerns with the March 29, 2010, memorandum (b)(6),(b)(7)(C) justify the selection of (b)(6),(b)(7)(C) over other candidates. Human Resource officials working on the vacancy announcement found fault with the original justification memorandum, indicating that the justifications for excluding other candidates were weak. Additionally, Human Resources

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took exception to a statement in the draft memorandum stating that (b)(6),(b)(7)(C) "Requested to be hired for this position by EERE (b)(6),(b)(7)(C) and EERE (b)(6),(b)(7)(C) Human Resources officials directly involved in the process (b)(6),(b)(7)(C) that a request from senior leadership to hire (b)(6),(b)(7)(C) was not a proper justification for the decision. Ultimately, (b)(6),(b)(7)(C) changes to the memorandum which strengthened the objections to the other candidates and deleted the reference (b)(6),(b)(7)(C) The final justification memo was dated April 13, 2010.

During our inquiry, (b)(6),(b)(7)(C) us that the statement concerning the request (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) was true. However, (b)(6),(b)(7)(C) involvement in the hiring (b)(6),(b)(7)(C) did not review the qualifications of any of the candidates, did not participate in any of the interviews and did not direct (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) that from (b)(6),(b)(7)(C) a well qualified candidate. Due to the conflicting testimony, we could not determine whether (b)(6),(b)(7)(C) actually involved in the hiring (b)(6),(b)(7)(C) However, the fact that a senior official such as (b)(6),(b)(7)(C) names in the justification memo and in other communications with Human Resources officials gave the appearance that (b)(6),(b)(7)(C) candidate.

The final justification memo was approved by an appropriate Human Resources official in making a final determination on the selection (b)(6),(b)(7)(C) Although this memorandum was approved, several witnesses who saw the memorandum, including other Human Resources officials, questioned some of the justifications that remained for the selection (b)(6),(b)(7)(C) Specifically, the memorandum stated that (b)(6),(b)(7)(C) "Currently works in OWIP (b)(6),(b)(7)(C) Deputy," that he was "Responsible for all operations (b)(6),(b)(7)(C) at OWIP at this time," and that he "Oversees all project implementation of EECBG program." Witnesses stated their belief that these statements suggested that (b)(6),(b)(7)(C) had already been selected and was already performing the governmental functions and duties associated with the position for which he was eventually hired.

Additionally, we obtained evidence supporting the fact that (b)(6),(b)(7)(C) prepare the justification for his own advance in-hire. Specifically, on March 10, 2010, (b)(6),(b)(7)(C) him an email stating, "Can you put together your advance in hire too – so that we can be prepared with it. Should look like attached. Thanks." (b)(6),(b)(7)(C) "Will do." Based on the justification he apparently prepared (b)(6),(b)(7)(C) was appointed at the GS-15, Step 10 level.

Despite these troubling circumstances, there was some important conflicting evidence. Specifically:

(b)(6),(b)(7)(C) that while (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) as a good candidate, (b)(6),(b)(7)(C) understood that he would need to apply to vacancy announcements and be deemed a qualified candidate. (b)(6),(b)(7)(C) justification for selection also indicated that (b)(6),(b)(7)(C) not deem any of the other candidates qualified for the position based on the interviews (b)(6),(b)(7)(C) and,

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- (b)(6),(b)(7)(C) that he was not pre-selected for a position and was never promised a position with EERE.

(b)(6),(b)(7)(C) us that (b)(6),(b)(7)(C) to the Federal government and unfamiliar with Federal rules and regulations for hiring of employees. (b)(6),(b)(7)(C) that, as (b)(6),(b)(7)(C) in the Federal government, (b)(6),(b)(7)(C) extensively on Human Resources to guide (b)(6),(b)(7)(C) the complex process and to ensure that the process remained fair. However, when asked (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) involvement in the hiring action could be seen as an unfair advantage and in hindsight (b)(6),(b)(7)(C) as an applicant, should have been recused from doing that work.

#### Potential Violations of Laws and Regulations

Based on concerns noted above, in our opinion, the process related to the hiring (b)(6),(b)(7)(C) was tainted, including likely violations of the following laws and regulations:

- 5 U.S.C. 2301(b)(1): "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity;"
- 5 U.S.C. 2302(b)(6): "Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;"
- 5 U.S.C. 2302(b)(12): "Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;"
- 5 C.F.R. 2635.101(b)(8): "Employees shall act impartially and not give preferential treatment to any private organization or individual;" and,
- 5 C.F.R. 2635.101(b)(14): "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

We concluded that this matter should be referred to the U. S. Special Counsel for prosecutorial determination. Because of their proximity in time and appointment by the same selecting

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official, we are also forwarding complaints regarding the hiring (b)(6),(b)(7)(C) to the Special Counsel for review.

### Contract Employee Performing Inherently Governmental Duties

Complainants alleged that (b)(6),(b)(7)(C) as a contract employee, improperly performed duties that were considered inherently governmental. Inherently governmental duties are those activities that are so intimately related to the public interest, that they must be performed by Federal employees. Specifically, complainants alleged that (b)(6),(b)(7)(C) while still a contract employee, was identified (b)(6),(b)(7)(C) deputy and in that role, he improperly directed Federal employees. Additionally, one complainant questioned (b)(6),(b)(7)(C) involvement in other activities considered to be inherently governmental, including participating in the development of Federal employee performance standards.

We found that the (b)(6),(b)(7)(C) may have violated Federal Acquisition Regulation (FAR) 7.503(c)(9) which identifies "the selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment" as an inherently governmental function. We determined (b)(6),(b)(7)(C) participated on panels that interviewed candidates for Federal employment. (b)(6),(b)(7)(C) and several other witnesses expressed their belief that his participation in the interviews was allowable because final decisions on hiring (b)(6),(b)(7)(C)

We also, through evidence gathered from multiple sources, substantiated a number of other practices that lead the complainants and others to believe that (b)(6),(b)(7)(C) performing inherently governmental functions. Specifically, a number of parties and (b)(6),(b)(7)(C) had been publicly identified (b)(6),(b)(7)(C) deputy. His identification as a deputy was further supported by the written statement to that effect found in (b)(6),(b)(7)(C) memorandum justifying the selection of (b)(6),(b)(7)(C) for Federal employment. Additionally, complainants and witnesses stated that (b)(6),(b)(7)(C) not always identified as a contractor and this led to some people erroneously concluding that he was a Federal employee. Complainants and witnesses expressed concern that a support service contract employee could be designated as a deputy for a Federal program, a function they considered to be inherently governmental by its very nature.

Further, witnesses told us that in addition (b)(6),(b)(7)(C) a career Federal employee, (b)(6),(b)(7)(C) deputy. However, our inquiry determined that neither (b)(6),(b)(7)(C) was ever formally appointed to be (b)(6),(b)(7)(C) deputy because a deputy position did not even exist. In fact (b)(6),(b)(7)(C) that Human Resource officials had (b)(6),(b)(7)(C) that the term "deputy" did not exist in the organizational chart and (b)(6),(b)(7)(C) stop referring (b)(6),(b)(7)(C) duties. It is understandable how the identification of (b)(6),(b)(7)(C) as a deputy would give an appearance that he was performing inherently governmental duties. However, the regulations state that the mere appearance of performing inherently governmental duties, in the absence of actually performing them, is not a violation. Therefore, to determine whether violations occurred, we performed steps to determine what activities (b)(6),(b)(7)(C) involved in.

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Our inquiry established that (b)(6),(b)(7)(C) actively involved in the management of the EECBG and other OWIP programs. Specifically, he participated in high-level management meetings where policy and strategic decisions were made, assisted in the development and implementation of program goals, participated in the hiring process for new employees. Of particular interest was our finding that (b)(6),(b)(7)(C) worked on performance standards for Federal employees. The breadth of (b)(6),(b)(7)(C) role within OWIP, public statements concerning his role as program deputy, and the inconsistent identification of his status all gave rise to the concern that (b)(6),(b)(7)(C) performing a wide range of inherently governmental duties including directing Federal employees.

However, we received testimony and documentary evidence to the contrary. For example, we were told that:

- (b)(6),(b)(7)(C) providing consulting services and all program decisions were made by Federal employees;
- While (b)(6),(b)(7)(C) worked on position descriptions and performance agreements, those documents were ultimately approved by a Federal employee; and,
- Any "direction" (b)(6),(b)(7)(C) to Federal employees was from (b)(6),(b)(7)(C) or other EERE senior leaders rather than himself.

Although the evidence we gathered does not conclusively establish wrongdoing, it was clear that the extent of (b)(6),(b)(7)(C) responsibilities led to the perception that the complainants and witnesses had concerning inherently governmental duties. Concerns about the role of contractors in the Federal government, as illustrated by the facts in this case, are currently an area of emphasis for the Office of Management and Budget (OMB). OMB is currently in the process of issuing new guidance in the form of a proposed policy letter on Work Reserved for Performance by Federal Government Employees. This guidance may clarify the matters raised in this case.

### **Improper Awarding of Work to a Contractor without Competition**

It was alleged that work was inappropriately awarded to New West Technologies without competition. Specifically, New West Technologies was tasked to provide support to the Golden Field Office (Golden) in processing grant awards under the Recovery Act. Complainants indicated that New West Technologies employees were "forced on" Golden. Also, Golden already had a support contractor, Navarro Research and Engineering, Inc. (Navarro), which should have been tasked with this work.

The facts developed during our inquiry disclosed that the questioned work was performed by New West Technologies under an existing contract EERE had with New West-Energetics Joint Venture, LLC (New West-Energetics) a joint venture between New West Technologies and Energetics Incorporated, through the modification of existing task orders. The work was within the scope of the existing contract and the decision to task the work to the contractor appeared to be within management's discretion.

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EERE awarded a competitively bid contract (DE-EE0000002) to EnergyWorks Joint Venture, LLC, now known as New West-Energetics, on June 25, 2008, to provide technical, engineering, analytical, and management support services to EERE's Office of Assistant Secretary and Deputy Assistant Secretary for Technology Development. In February 2010, EERE management determined that Golden needed contractor assistance to meet its goals for the issuance of Recovery Act Grants. At that time, a decision was made to provide that assistance through the modification of Task Order 74 on the New West-Energetics contract at an expected cost of approximately \$5.2 million. We were informed that additional work at Golden was also tasked under Task Orders 5 and 82. We determined that the work at Golden was within the scope of the New West-Energetics contract and found no evidence that tasking the work under the contract was prohibited by any laws or regulations.

We confirmed that Golden did have an existing contract with Navarro and asked why the work was not tasked to that contractor. The (b)(6),(b)(7)(C) and EERE management asserted that the task went to the New West-Energetics contract instead of Navarro for the following reasons:

- Contractor assistance needed at Golden included support of the National Environmental Act Policy (NEPA) reviews of Recovery Act projects, and EERE wanted the expertise of ICF International, a subcontractor on the New West-Energetics contract that had provided NEPA support to EERE's HQ offices. Navarro did not have NEPA experience;
- Because of the urgency caused by the Recovery Act, EERE wanted to get contract assistance in place as soon as possible and it was deemed that modifying an existing task order on the New West-Energetics contract would be the fastest approach; and,
- Navarro was reaching the ceiling on its contract.

We were also told by several witnesses that an additional factor in using the New West-Energetics contract was to allow EERE management at Headquarters to execute greater control over the work being performed due to concerns about the performance of Golden in implementing the Recovery Act grant programs.

Although we did not substantiate the allegation that work was improperly awarded to New West Technologies, we identified a separate concern related to task order assignments. Specifically, we found that (b)(6),(b)(7)(C) a New West Technologies employee, was actively involved in developing the statement of work for the additional tasks to New West Technologies under the New West-Energetics contract. We concluded that this was an obvious conflict which, whether intended or not, provided the opportunity for (b)(6),(b)(7)(C) to improperly influence Federal taskings to his employer. While this potential existed, we did not substantiate that (b)(6),(b)(7)(C) acted inappropriately in this regard.

#### Other Matters

In addition to the specific allegations discussed in our report, we also found evidence of a disturbing practice related to Federal participation in support service contractor hiring. Specifically, we identified situations in which EERE officials requested contractors to hire

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specific individuals and assign them to support its contracts. In other cases, EERE requested that contractors hire individuals temporarily until they could be brought on as permanent Federal employees. We found that, in some cases, after extending Federal job offers to these individuals, EERE would request that contractors hire them and assign them to its contract so that they could be brought on board more quickly than the Department's own hiring process. In some instances, the individuals were actually hired by the support service contractor, while in another, the contractor resisted attempts by a senior Federal official to specify which employees it hired. In a May 2010 email, a procurement official, after learning of these practices, cautioned a senior EERE manager that staffing is the responsibility of the prime contractor and that Federal employees should not participate in interviewing potential contract employees.

### WORK ATMOSPHERE

Our inquiry focused on identifying the facts surrounding specific allegations concerning an individual contract employee and contractor. In doing so, we were mindful that these activities occurred during EERE's early efforts to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act). While a formal cause and effect relationship could not be established, we noted that the Recovery Act significantly expanded the EERE programs and resulted in the need to immediately hire a large number of Federal employees and to expand the use of contractors in implementing EERE's programs. Several witnesses discussed the pressure EERE was under to implement the Recovery Act programs and expressed their belief that this pressure led to the Program's reliance on less than optimal Federal hiring and contracting practices.

### RECOMMENDATIONS

Because of the significance of the Recovery Act and the relevance of the Department's hiring and contracting practices to the success of the Recovery Act's energy components, the Department should take prompt action to ensure that the issues raised in our report are addressed. Consequently, we recommend that the Deputy Secretary of Energy, in conjunction with applicable staff organizations:

1. Determine and administer appropriate administrative and/or disciplinary action to address the violations related to the hiring of (b)(6),(b)(7)(C)
2. Conduct an independent evaluation of EERE's hiring practices, including the hiring of contract employees for Federal positions. As part of that review:
  - Develop and implement appropriate controls to prevent such violations in the future; and,
  - Determine whether similar violations occurred in the cases (b)(6),(b)(7)(C)
3. Ensure that new supervisors receive adequate training on Federal hiring rules and regulations;

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4. Review, modify, and/or stress adherence to policies and procedures as they relate to prohibitions from interference or directing contractors to hire specific individuals; and,
5. Review and modify policies and procedures for the identification and role of contractor employees, including controls designed to prevent them from developing task orders for their own contracts. Also, specifically determine whether the support service contract employee participation on interviewing panels violates FAR or other requirements concerning inherently governmental functions.

A formal response is required to this report. When received, management's response will be appended to the report.

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