



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

OAS-SR-10-04

September 2010



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 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

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.

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.

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.

This memorandum serves as a public Executive Summary of this report. The detailed results of this Special Inquiry have been published in a separate, non-public report to management. 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

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