



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Inspection Report

Alleged Ethical and Procurement
Concerns at the Office of Nuclear
Energy

INS-L-12-05

August 2012



Department of Energy
Washington, DC 20585

August 16, 2012

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR NUCLEAR ENERGY
DIRECTOR, OFFICE OF PROCUREMENT AND ASSISTANCE
MANAGEMENT

Sandra D. Bruce

FROM: Sandra D. Bruce
Assistant Inspector General
for Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on "Alleged Ethical and
Procurement Concerns at the Office of Nuclear Energy"

BACKGROUND

Approximately 80 percent of the Department of Energy's workforce is comprised of contractor personnel who provide services to assist with managing projects and programs. This type of environment can present unique situations that require special diligence from Department managers, requiring them to balance support needs with ensuring that applicable Federal regulations and procurement guidelines are followed. Generally, Federal employees are prohibited from becoming involved in contractor employee personnel matters such as hiring and terminating personnel, supervising contractor employees and assigning tasks to contractor employees that, by Federal regulation, can only be performed by Federal employees.

The Office of Inspector General received a complaint alleging that a Department management official within the Office of Nuclear Energy (NE) may have violated Federal regulations and procurement guidelines regarding preferential treatment of a contractor employee, to include involvement in contractor hiring decisions relating to that employee. We initiated this inspection to determine the facts and circumstances surrounding the allegation.

CONCLUSIONS AND OBSERVATIONS

We did not substantiate the allegation that a NE manager violated Federal regulations and procurement guidelines involving contractor hiring decisions. While we found that the subject of the allegation had taken certain actions on behalf of a particular individual, the involvement did not appear to violate Federal regulations. In fact, the Department's Office of the General Counsel opined that the actions taken by the NE manager in question did not reach the level of violating Federal regulations or procurement guidelines.

We did note, however, that the actions taken by the NE manager may have caused others to perceive that the manager improperly influenced the hiring decisions of the contractors involved.

We also learned that the sort of involvement we identified in this case was not unique. Department procurement officials told us that involvement by program officials in contractor hiring decisions was not an uncommon practice. In addition, we previously identified similar issues in our report on *Review of Allegations Regarding Hiring and Contracting in the Office of Energy and Efficiency and Renewable Energy* (OAS-SR-10-04, September 2010). Specifically, the report addressed the issue of Federal officials directing contractors to hire specific contractor personnel and assign them to support contracts.

Involvement in Contractor Personnel Matters

We found that the NE manager in question did speak with contractor officials regarding the qualifications and hiring of a particular individual on at least two occasions. In the first instance, the NE manager spoke with a contractor official who ultimately hired the aforementioned individual under an existing service contract. We were told that, during a meeting between the NE manager and the contractor project manager, this individual's name was mentioned regarding job-related qualifications for work on a new project within NE. While the NE manager did not order or direct the contractor to hire the individual, the contractor project manager told us that the individual was hired as a consultant under the existing service contract. The contractor project manager said that this hiring decision was based on the individual's professional skills and to satisfy the needs of the customer as expressed by the NE manager.

Approximately two years later, other individuals knowledgeable of the situation told us that the NE manager attempted to secure a position for the aforementioned individual under another NE service contract.¹ In this instance, the NE manager contacted Federal officials at a Department site and requested that they secure a position for the individual on a service contract being managed by that site. We were informed that the NE manager wanted to secure the individual's services at a lower cost under a different contract. However, during this time period, the individual was contacted by another Department contractor and was made an offer of employment. We learned from Federal officials at the Department site that the NE manager's effort to place the individual under the service contract managed by the site was never finalized because the individual accepted the offer of employment with another Department contractor. It should be noted that the NE manager in question has since left the Department for unrelated reasons. After consultation with the Department's General Counsel on these matters, and based on available information developed during our inspection, it did not appear that the NE manager's actions relating to the contractor employee reached the level of violating Federal regulations or procurement guidelines.

Federal and Procurement Guidelines

During this inspection and as noted in the prior Office of Inspector General report, we found that Department manager involvement in contractor employee personnel matters, or at least the appearance of such involvement, may not be that unusual. During our inspection, we interviewed a number of Department procurement officials who indicated that the issues identified in this report were not uncommon occurrences. As we have reported in the past,

¹ At this time, the individual was still an employee under the service contract discussed above.

Federal officials requested that contractors hire individuals until they could be brought on as permanent Federal employees. In addition, we identified examples of Federal officials directing contractors to hire specific contractor personnel and assign them to support contracts.

In response to the prior report, the Department's Office of Procurement and Assistance Policy issued Policy Flash 2011-23, adding Chapter 37.114, *Federal and Contractor Roles in the Federal Workplace*, to the Department's Acquisition Guide in December 2010. According to the policy guidelines, Federal employees generally should not be involved in contractor personnel decisions. The guidelines note that Federal employee participation in contractor hiring decisions clouds the traditional and appropriate allocation of contract performance and cost risks between the Government and the contractor. The guidelines also state that, in rare cases, Federal involvement may be necessary when there is a pressing Federal interest in the contractor's selection of certain employees due to the nature of the services or supplies being procured. However, in those instances, the risks of violating prohibitions regarding personal services or inherently governmental functions must be explicitly acknowledged. Although the guidelines prohibited a Federal manager from directing a contractor to hire a particular individual, Federal managers are allowed to provide a contractor with names of competent individuals.

Also, in March 2011, the Director, Office of Management, released Policy Flash 2011-50, with an attached memorandum addressed to the Heads of Departmental Elements, entitled *Working Effectively with Contractors*. This memorandum indicated that, with rare exception, Department officials should not direct contractor selection or termination of employees. The memorandum warned that giving such direction alters the traditional allocation of contractual responsibilities between the Government and its contractors, diminishing the Department's ability to hold contractors accountable. The memorandum was being distributed to reemphasize that, in some instances, Federal officials who encourage or direct contractors to hire a specific individual are misusing their Federal positions.

Path Forward

Department Federal employees and contractor employees often work side by side on a daily basis. This type of environment presents unique situations that require special diligence from Department managers. Because the NE manager's actions could have caused others to perceive that contractor hiring was improperly influenced, we believe continued vigilance in this area is warranted. In particular, we suggest that steps be taken to ensure strict compliance with recently published guidance on Federal officials' involvement in contractor hiring decisions.

No recommendations are being made in this report; therefore, a response is not required. We appreciate the cooperation received from your staffs during our inspection.

Attachments

cc: Deputy Secretary
Associate Deputy Secretary
Chief of Staff

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of this inspection was to determine the facts and circumstances surrounding the allegation that a Federal management official within the Department of Energy's (Department or DOE) Office of Nuclear Energy (NE) may have violated Federal regulations and procurement guidelines regarding preferential treatment of a contractor employee, to include involvement in contractor hiring decisions relating to that employee.

SCOPE

The inspection was completed in July 2012. The inspection fieldwork was conducted at Idaho National Laboratory in Idaho Falls, ID; Department Headquarters in Washington, DC; and, at the headquarters of an NE service contractor.

METHODOLOGY

To accomplish the inspection objectives, we interviewed key individuals that provided first party information concerning the elements of the allegation. Additionally, we also obtained opinions from the Department's General Counsel and procurement subject matter experts. We obtained and reviewed pertinent documents such as contract documents, personnel records, emails, and billing invoices. Further, we reviewed the following applicable Federal and Department acquisition guidelines:

- Title 5 CFR 2635.502, *Standards of Ethical Conduct for Employees of the Executive Branch: Subpart E, Impartiality in Performing Official Duty*;
- Policy Flash 2011-23, DOE Acquisition Guide: Chapter 37.114, *Federal and Contractor Employee Roles in the Federal Workplace*;
- Federal Acquisition Regulations, Part 37, *Service Contracts*; and,
- Policy Flash 2011-50, a memorandum from the Director, Office of Management on, *Working Effectively with Contractors*, dated March 2, 2011.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*, January 2011. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective. The review included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Finally, we relied on computer-processed data to some extent to satisfy our inspection objective. We confirmed the validity of such data, as appropriate, by conducting interviews and reviewing source documents.

An exit conference was waived by the Office of Nuclear Energy and the Office of Procurement and Assistance Management.

PRIOR REPORTS

- Special Inquiry Report on [*Review of Allegations Regarding Hiring and Contracting in the Office of Energy and Efficiency and Renewable Energy*](#) (OAS-SR-10-04, September 2010). The Special Inquiry concluded that Federal officials within the Office of Energy Efficiency and Renewable Energy (EERE) directed contractors to hire specific contract personnel and assign them to support contracts. In other cases EERE officials requested contractors to hire individuals until they could be placed as permanent Federal employees.
- Special Inquiry Report on [*Review of Allegations Involving Potential Misconduct by a Senior Office of Environmental Management Official*](#) (OIG No. S09IS024, December 2009). The Office of Inspector General received multiple allegations concerning improprieties by a senior official with the Office of Environmental Management. One of the allegations involved directing Savannah River site contractor personnel to hire three specific individuals. During the inquiry, testimony was received that supported aspects of the allegations; however, other witnesses provided contradictory testimony. For example, Senior Federal personnel and certain contractor officials claimed to have been directed to hire specific individuals for American Recovery and Reinvestment Act of 2009 positions. Other individuals disputed that such direction occurred. The report concluded that, regarding many of the events and activities that were key to the allegations, witness testimony was conflicting and irreconcilable. Perceptions, interpretations, and recollections of these events, as well as views on the intent of the individuals involved, varied dramatically.

CUSTOMER RESPONSE FORM

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We wish to make our reports as responsive as possible to our customers' requirements, and, therefore, ask that you consider sharing your thoughts with us. On the back of this form, you may suggest improvements to enhance the effectiveness of future reports. Please include answers to the following questions if applicable to you:

1. What additional background information about the selection, scheduling, scope or procedures of the audit or inspection would have been helpful to the reader in understanding this report?
2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report that would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

Name _____ Date _____

Telephone _____ Organization _____

When you have completed this form, you may telefax it to the Office of Inspector General at (202) 586-0948, or you may mail it to:

Office of Inspector General (IG-1)
Department of Energy
Washington, DC 20585

ATTN: Customer Relations

If you wish to discuss this report or your comments with a staff member of the Office of Inspector General, please contact our office at (202) 253-2162.

This page intentionally left blank.

The Office of Inspector General wants to make the distribution of its reports as customer friendly and cost effective as possible. Therefore, this report will be available electronically through the Internet at the following address:

U.S. Department of Energy Office of Inspector General Home Page
<http://energy.gov/ig>

Your comments would be appreciated and can be provided on the Customer Response Form attached to the report.