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The Special Counsel

October 31, 2024

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Whitten Building, Suite 200A
Washington, D.C. 20250

Re: OSC File No. DI-25-000006
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Vilsack:

I am referring to you for investigation a whistleblower disclosure alleging employees at the U.S. Department of Agriculture (USDA), Office of the Under Secretary for Rural Development, Washington, District of Columbia, engaged in conduct that may constitute a violation of law, rule, or regulation. A report of your investigation into these allegations and any related matters is due to the Office of Special Counsel (OSC) on January 3, 2025.

The whistleblower, who chose to remain confidential, disclosed that in September 2024, the Under Secretary for Rural Development, Dr. Basil Gooden, executed solicited cooperative agreements which were neither properly competed nor independently reviewed in violation of 2 C.F.R. Part 415.1. The allegations to be investigated include:

- The agency's obligation of funds to Northwest Rural Investment Strategy on September 23, 2024, via a solicited cooperative agreement which was not fairly and impartially reviewed or properly competed; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

Specifically, 2 C.F.R. Part 415.1(b) states that "USDA awarding agencies must enter into discretionary grants and cooperative agreements *only after competition*" (emphasis added).¹ This section further requires that solicited cooperative agreements be "evaluated objectively by independent

¹ 2 C.F.R. § 415.1(b) (2024).

reviewers in accordance with evaluation criteria set forth in writing by the USDA awarding agency.”² On August 1, 2024, the Washington State Rural Development Office contacted the Rural Business-Cooperative Service regarding entering into a solicited cooperative agreement with Northwest Rural Investment Strategy. When Rural Business-Cooperative Service employees informed the Washington State representative that solicited cooperative agreements must be competed and independently reviewed prior to the obligation of funds, the Washington State representative appeared to understand and withdraw from the process. However, several weeks later, the funds were obligated by Dr. Gooden to Northwest Rural Investment Strategy, despite the lack of competition and independent review. The whistleblower reported that this was one of many agreements that were neither properly competed nor independently reviewed by various Rural Development State Offices.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower’s comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov. I am also available for any questions you may have.

Sincerely,



Hampton Dellinger
Special Counsel

Enclosure

² *Id.* at Section (b)(2).

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- The statute provides that the agency report shall be reviewed and signed by the agency head. 5 U.S.C. § 1213(d). Agencies should fulfill this Congressional mandate.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. 5 U.S.C. §§ 1213(f), 1219(a)(1).