



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 12, 2013

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-11-3547

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report and a supplemental report based on disclosures made by an anonymous whistleblower. The whistleblower alleged that David Olson, Regional Director, Department of Homeland Security (DHS), Federal Protective Service (FPS), Region 6, Kansas City, Missouri, was involved with his neighbor, Mr. Brad Quigley, in a wasteful and improper government procurement scheme regarding the purchase of law enforcement surveillance equipment.

The agency report largely substantiated the whistleblower's allegations. According to the agency report, Mr. Olson improperly facilitated and influenced the purchase of \$257,472 in law enforcement surveillance equipment from his friend, Brad Quigley. Mr. Quigley drafted the Statement of Work and discussed the contract approval process with Mr. Olson in violation of the Federal Acquisition Regulations (FAR). Mr. Olson also failed to disclose that he and Mr. Quigley were neighbors and friends. However, the agency did not find that the agency funds were wasted on the purchase. As a result of the investigation, the agency created a senior technical advisor position to provide contract oversight and Mr. Olson was issued a Notice of Proposed Suspension for 14 days.

Based upon my review of the original disclosure, the agency reports, and the whistleblower's comments, I have determined that the agency reports contain all of the information required by statute and that the findings appear to be reasonable. That said, I am sympathetic to the whistleblower's comments that it appears that the agency was overly lenient towards Mr. Olson in terms of his proposed disciplinary action and subsequent settlement agreement.

1 The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c).

Upon receipt, the Special Counsel reviews the agency's report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency's report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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The whistleblower's allegations were referred on January 26, 2012, to the Honorable Janet Napolitano, then-Secretary of Homeland Security, to conduct an investigation.¹ On February 1, 2013, L. Eric Patterson, FPS Director, submitted the agency's report to this office. The DHS Office of Inspector General (OIG) investigated the matter. On May 21, 2013, the agency provided a supplemental report on the agency's planned or taken corrective actions, which the FPS Office of General Counsel updated by on May 30, 2013. On August 8, 2013, pursuant to 5 U.S.C. § 1213(e)(1), the whistleblower submitted comments on the agency's findings. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency reports and the whistleblower's comments to you.

According to the original agency report, Mr. Olson requested that his neighbor, Mr. Quigley, President, 4G Solutions, draft the agency's Statement of Work on a contract that was eventually awarded to Mr. Quigley's company. DHS FPS Contract #HSHQC6-10-P-0006. The investigation revealed that the Statement of Work was not prepared by a federal employee as required by FAR. Although it is permissible under the FAR to solicit technical assistance from vendors in the preparation of the Statement of Work, vendors that provided assistance may not be awarded the contract except in limited circumstances that did not apply in this case. The investigation further revealed that employees who normally review contracts as technical experts were not included in the award review process for this contract.

The investigation revealed that Mr. Olson and Mr. Quigley improperly discussed the procurement process eight months prior to the contract award, including the steps needed to expedite the contract award. In addition, Mr. Quigley testified that he and Mr. Olson were neighbors and friends for approximately eight years and socialized together. Mr. Olson admitted that he did not disclose to agency procurement employees that Mr. Quigley was his neighbor. The agency report also reflected that Deputy Regional Director David Thomas and Supervisory Special Agent Steven Familo were aware that Mr. Quigley was Mr. Olson's neighbor. Mr. Olson had told Mr. Familo that it was customary for contractors to contribute to the preparation of documents when technical assistance was needed in making an acquisition, and Mr. Familo did not challenge the practice.

The agency report concluded that Mr. Olson improperly influenced and facilitated the award of a surveillance equipment purchase contract to his friend and neighbor, Mr. Quigley, in the amount of \$257,472. The agency report did not find, however, that the agency wasted funds on the purchase of the equipment, which was determined to be necessary as a back-up system. Although the surveillance equipment had been held in storage, employees were trained to use the equipment and it was available if the equipment were needed. The United States Attorney's Office declined prosecution of this case.

On May 21, 2013, the agency provided a supplemental report regarding corrective action and, further, on May 30, 2013, the agency provided updated information stating that Mr. Olson was issued a Notice of Proposed Suspension for 14 days. The supplemental report

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acknowledged that, at first glance, this circumstance suggests “nefarious” misconduct. Upon further review, the evidence suggests that Mr. Olson believed that his actions were proper, particularly given that he had forwarded Mr. Quigley’s draft proposal to his management without any attempt to hide that the proposal came from his neighbor. In addition, as part of the agency’s corrective action, a position was created at FPS headquarters to provide contract oversight and supervise contract formulations and awards in accordance with the FAR and agency policy and regulations. On August 28, 2013, the agency informed OSC that Mr. Olson subsequently entered into an Alternative Dispute Agreement with the agency in response to the proposed disciplinary action taken against him.

The whistleblower provided comments on the agency reports. The whistleblower expressed disappointment that the agency issued only a proposed 14-day suspension to Mr. Olson, given that the agency report found that he improperly influenced a government contract and “...the evidence clearly established [that Olson] was not forthcoming when asked if he had prior specific conversations with his friend the Contractor...” The whistleblower emphasized, per the agency report, that other managers, including Messrs. Thomas and Familo, were reluctant to expose Mr. Olson’s potential contract improprieties to appropriate investigatory officials, even after Mr. Olson informed Mr. Familo that it was customary for contractors to provide information. The whistleblower added that the agency had a history of backing Mr. Olson’s proposed terminations against subordinates for similar and/or lesser allegations of misconduct, but failed to propose appropriate disciplinary action against Mr. Olson for this misconduct despite OIG’s evidence and investigatory findings.

I have reviewed the original disclosure, the agency reports, and the whistleblower’s comments. Based on that review, I have determined that the agency’s reports contain all of the information required by statute, and the findings appear to be reasonable. Although disciplinary action is within an agency’s discretion, I am sympathetic to the whistleblower’s comments that it appears that the agency was overly lenient towards Mr. Olson in its proposed disciplinary action and subsequent settlement agreement, given that Mr. Olson holds a senior position in the FPS and he improperly influenced and facilitated the award of a government contract to a friend and neighbor. Furthermore, although the agency created a new position of technical advisor with contract oversight duties at FPS Headquarters, the agency report found that Mr. Olson did not avail himself of the agency’s technical expert already on Mr. Olson’s staff.

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As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's unredacted reports and whistleblower's comments to the Chairs and Ranking Members of the Senate Committee on Homeland Security and Government Affairs and the House Committee on Homeland Security. I have also filed copies of the agency's redacted reports and the whistleblower's comments in our public file, which is now available online at www.osc.gov.¹ This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

¹ FPS provided OSC with a report containing a glossary of employee names by employees' titles (enclosed) and a report withholding employees' names. FPS cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)) as the basis for its redactions to the report produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version in our public file. OSC objects to the FPS's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b).