**OSC FILE NO. DI – 11-3547 WRITTEN COMMENTS**

**AUTHOR TO BE ANONYMOUS**

According to the DHS-OIG synopsis, page 1 of 8, paragraph (2), of the Report of Investigation (ROI), the OIG investigation "produced evidence which revealed that the RD (Regional Director David Olson) did improperly influence and facilitate the award of FPS Contract # HSHQC6-10-P-00006 to his neighbor and friend, the Contractor."

Yet, according to the May 21, 2003 correspondence page 2 of 8, paragraph (3), from Joshua Klipp, Attorney-Advisor - DHS HQ, to the OSC, regarding examined charge for *Lack of Candor*, his office described the seriousness of this charge in regards to FPS being a law enforcement agency, and its mandatory removal penalty. Although the OIG sustained the allegation with evidence discovered through multiple emails, described in the OIG report, page 7 of 8, paragraph (3), and page 8 of 8, paragraph (3), between the RD and the Contractor, DHS chooses to claim the severity of this charge is not sustainable based on the evidence. The evidence clearly established the RD was not forthcoming when asked if he had prior specific conversations with his friend the Contractor. These emails not only show specific discussions, but also coaching by the Contractor to the RD on how to expedite the approval process. The agency clearly wishes not to seek termination, thus is dismissing this charge, by alleging the severity is not sustainable in contrast to the OIG report. It's not up to the agency to determine severity as the penalties and offenses have been previously defined and adherence mandated. This example is generally seen when misuse of a government vehicle is identified and a first time mandatory 30-day suspension is prescribed. An agency cannot, once the allegation is proven, subjectively propose a letter of reprimand because they feel the penalty is too harsh for the violator. As is such, the lack of candor charge is equally defined as being so severe with regards to law enforcement agencies, that it affects the person's ability to testify in court, a core competency, making the officer unable to perform his basic duties.

In this case, the RD went so far as to use vague phrases such as "I am not certain" as not to lock him into any position on the matter. The RD is a retired veteran from the USAF Security Forces (Law Enforcement) and currently holds a position as a GS-15 Regional Director/Supervisory Special Agent (Criminal Investigator) overseeing a law enforcement/physical security operation of around sixty (60) sworn law enforcement officers and special agents. The RD is the final approver of all criminal investigations, thus must have the ability to understand criminal investigations, its logic, process, lexicon, and ensure the report clearly addresses all the allegations whether sustained or not. The RD's claim of not being certain who prepared the Statement of Work (SOW), or if he ever had prior discussions regarding the solicitation of the contract, even after confronted with proof he did, severely undermines his role as the regional director notwithstanding other allegations pending. A similarly situated person would reasonably

believe the RD's responses to the allegations are purposely vague and deceiving, and an attempt to position himself in the future to be able to amend his responses, in case further evidence is introduced that impeaches his current statements. This is a common technique used by suspects under criminal investigation.

In fact, this RD has a proven history in proposing termination as discipline for similar and/or lesser misconduct issues involving his subordinates. The agency has supported these decisions and it only stands fair the agency holds the RD to the same standards he has applied to his subordinates.

Regarding the initial discovery of the failure of the RD to disclose his personal relationship between the Contractor and himself, both the FPS Deputy Regional Director (DRD) David Thomas and the FPS Supervisory Special Agent (SSA) Steven Famil o had knowledge of this violation and went so far as to conduct a preliminary internal affairs investigation into the matter, and then confront the RD with their suspicions, while not informing or coordinating with the FPS Compliance and Investigations Division (CID) at the time. According to OIG report, page 3 of 8, paragraph (3), it describes the RD telling then SSA Famil o, that the Contractor is his neighbor and contributed to the SOW. The RD has served as a Contracting Officer Representative (COR) with knowledge of the Federal Acquisition Rules (FAR), which specifically prohibits this collusion. SSA Famil o has also served as a COR, as is aware of this being a violation as well. In fact, during this investigation, the ROI describes the OIG interviewing agents; specifically referring to the passage in the FAR prohibiting this, when the OIG asked the actors in this investigation who believed this was a common and acceptable practice. It should be noted that neither DRD Thomas nor SSA Famil o carried out their responsibility to notify the OIG of this potential violation. Its DHS policy that any federal employee, when they become aware of a crime or violation, to notify the OIG immediately. In fact, it was not until December 2012, over a year after the initial discovery, that FPS was officially notified of the matter due to the fact that other FPS regional employees reported the misconduct. At no time during this period of over a year did DRD Thomas or SSA Famil o uphold their duty to report this violation, especially being sworn seasoned law enforcement officers.

Finally, the OIG report describes how the technical experts in the region, normally involved in procurement matters regarding counter-measures, were not consulted in this specific contract, allowing for the appearance of appearance of impropriety.