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U.S. Office of Special Counsel  
1730 M Street, NW Suite 218  
Washington, DC 20036-4505

2014 JAN 13 PM 3: 47

Re: OSC File No. DI-13-1252

Dear Ms. Bradley,

First and foremost I would like to thank the Office of Special Counsel for their unbiased review, analysis and consideration of my reported allegations of Federal Acquisition Regulations (FAR) violations involving my current United States Army employer, Kenner Army Health Clinic (KAHC).

From the beginning, my interests have been solely to identify the limitations of the government-contractor relationship as it related to my newly assigned supervisory government service role. Also, to ensure that my actions and requests being made of me by my KAHC leadership were not in violation of Federal Acquisition Regulations and/or the laws pertaining to the government-contractor relationship and "personal services" using non-personal services contracting mechanisms.

It is important to note, even to this date, neither the command leadership nor the results of the Army administrative investigation into this matter have provided clarity on the constraints of the government-contractor relationship.

After review of the Department of the Army report of findings regarding my whistleblower allegations (file # DI-13-1252) dated September 20, 2013 the following comments are provided;

- 1) Allegation #1 (KAHC management improperly created an employer-employee relationship between the government and the Psychometrist currently assigned to KAHC, a contract employee):

The Army's findings appear to be based on an incomplete investigation and/or withheld investigation material, this assertion is made based on the fact that the Army delegated to MEDCOM investigative responsibility which included the interview, as a minimum, of nine individuals (Trotto, Adams, CPT/ Dr. Jacquelyn Flood, Baynard, Leibman, Pina, Gagon, LTC Michael Pelzner, and Miller) (see MEDCOM MEMO dtd May 13, 2013) of which only four were interviewed over a four month period and their sworn statements included in the final Army report. It is important to note, I asked the Office of Special Counsel, three weeks prior to this response, for clarification on whether the Army did in fact interview these people. The email response I received indicated that all nine had been interviewed but again, only four statements have been provided by Army to date. These missing statements are from key senior individuals/decision makers directly involved in this matter.

Additionally according to the sworn statements of Flood, Pina, Trotto, and Adams, the Commanding Officer, at the time of my initial raising of concerns, acknowledges providing government funded items of professional recognition to include time off awards to several contractors within the KAHC Department of Behavioral Health (DBH). CPT Jacquelyn Flood, one of two division chiefs within this department and the one with responsibility over the testing lab, which included one GS employee (Trotto) and one contractor (Adams), repeatedly stated that she was operating with the

“understanding that Ms. Adams’ contract is a Personal Services contract”. CPT Flood also acknowledges that KAHC government employees manage time cards for contractors in her statement of July 1, 2013 in which she identifies the DBH government employee (Richardson) as the one responsible for contractor time cards. Flood also admits that she addressed contractor performance concerns with multiple layers of the Army (KAHC/MEDCOM) chain of command, none of which included the Contracting Officers Representative (COR).

The main contractor in question (Adams) also admitted in her sworn statement of May 17, 2013 that when she saw KAHC patients that her “supervision is directed by the psychologist who has referred the patient to me”. It is important to note that the majority of Ms. Adam’s patients were local KAHC clients vice Tele-Health. Also, half of KAHC department’s psychologists who would be providing this supervision are government employees and none of the Psychologists are affiliated with the Tele-health contract in question. In Ms. Adam’s statement on August 19, 2013, she identifies her “superiors” at KAHC as Dr. Leibman and Dr. Eleanor Gagon and at Tele-Health as Dr. Michael Lynch (who has since been removed from his position as Chief of Tele-Health Services) and Dr. Laura Moulton. All of these identified “superiors” are government employees.

Additionally Ms. Adam’s continuously behaved as if she were a government employee through acknowledgement and use of the government chain of command in raising work related/workplace concerns and went as far as attempting to utilize the services of the KAHC Human Resources Department.

If the proper understanding of the government – contractor relationship existed and was followed, the use of the Contracting Officer’s Representative (COR) would have been a central go between for all of these employer – employee activities. The KAHC COR was not engaged by KAHC DBH leaders until several months after my allegations and after my identification by name of who the COR was. Also, the KAHC COR was/is not the COR for the contract in question. The COR for the tele-health contract resides at WRAMC/Ft. Detrick.

Finally, CPT Flood and COL Pina, in sworn statements, both acknowledge the meeting between myself, LTC Pelzner, Dr. Gagon, and CPT Flood on December 12, 2012 was intended by me to be a utilization of the chain of command to address my allegations and my concerns. In sworn statements, Ms. Adams and CPT Flood both acknowledge in fact the meeting was executed as counseling for me resulting from concerns raised by the contractor (Adams) directly to LTC Michael Pelzner, the Deputy Commander for Clinical Services. While this counseling was in direct violation of the Commanders “Open-door” policy and perceived as retaliation, this whistleblower complaint only focuses on the FAR violations aspect of the KAHC leadership behavior/activities.

Again my initial and continuing allegation has been that Kenner Army Health Clinic created an improper employer - employee relationship as defined by FAR 37.104(d) and substantiated by all information provided in the Army’s report. Specifically, the manner in which supervision of contractors by government personnel was provided. By this I mean the planning, directing, and assigning of work; providing technical leadership; allowing participation by subordinates (contractors) in group decision making, administrative functions such as time keeping, leave approval, review of documents/products for quality; as well as assigning inherently governmental responsibilities , such as,

developing command standard operating procedures (SOP), policies, and work distribution plans. All of these activities are substantiated by various personnel in the sworn statements included and are likely further substantiated in the statements not provided but made by key leaders in the process.

2) Allegation #2 (KAHC management has continued this improper relationship despite being informed several times of the Psychometrists status as a contract employee):

Of course substantiation would require acknowledgement/substantiation of allegation #1. Again, I refute the Army's position that allegation #1 is unsubstantiated. It is important to reiterate that witness testimony by all four of the witnesses interviewed identify a chain of command perception that the contractor in question (Adams) was on a "Personal Services" contract and thus their behavior was in line with the rules/regulations identified by the FAR in such a case. If their behavior was never in violation of personal services regulations (Army investigation report opinion), there would be no need to claim they were ever "operating under the assumption that Ms. Adams was on a personal services contract."

The contract (W81XWH-09C-0168) was initially awarded by WRAMC on September 30, 2009 and identified the Psychometrist position as a "Personal Services" position. This position included six full time equivalent (FTE) psychometrist contract employees along with 37 FTE positions in other "personal services" positions. The intent was for these positions to be assigned throughout remote locations within the WRAMC areas of responsibility (AOR). The contract was modified at the post award conference, at the request of the awardee, and changed the psychometrist positions (and several other positions) to "non-personal services". This modification resulted in a total of only twelve of the original forty three FTEs being "personal services" in nature. Thus the subsequent contract modification dated December 10, 2009 (48 business days post award) resulted in a change and significant reduction of positions which would fall under the "personal services" exclusions. No psychometrist positions had been filled and placed into service by the awardee prior to the contract mod. Thus, execution of the contract and subsequent hiring and assignment of Psychometrists occurred in a "non-personal services" environment. The KAHC psychometrist position was hired/filled after the mod and thus fell under "non-personal services" from the start of any relationship between KAHC and the awardees Psychometrist.

The Army and KAHC assert that they never knew this change occurred and the Army's position is that the change had no bearing on the government – contractor relationship at any time post award. The fact that after three years with eight contract employees providing service under this contract that neither MEDCOM nor KAHC leadership was aware of these changes to the contract is concerning. Also, if there were truly no perceived violations by KAHC leadership at any time of personal services rules then there would be no need to differentiate their understanding of what type of contract the Psychometrist was on in their sworn statements. Additionally, I was in the meeting with Dr. Eleanor Gagon (Chief of Behavioral Health Department/ GS-15) and CPT Jacquelyn Flood (Chief of Psychology Division) on December 12, 2012 when Dr. Gagon called the COR (Miller) to her office. CPT Flood asserts that Ms. Miller stated that the contract in question was personal services yet it is my clear recollection that her (Miller) statement was to the contrary, that the contract and specifically the psychometrist position was "non – personal services". In fact Dr. Gagon's comment to Ms. Miller and those present was "we have had contractors here for years and we have always done it this way, we

can assign contractors as we want.” This is further substantiated by the fact that my allegations/concerns were regarding contract type. Had CPT Flood’s position been substantiated by the COR my follow – on counseling by LTC Michael Pelzner (Deputy Commander of Clinical Services KAHC) and herself would have stated this fact (personal services contract).

- 3) Allegation #3 (The improper relationship between the government and the contract Psychometrist may violate the Federal Acquisition Regulation, the Anti-deficiency Act, and other procurement guidelines).

Again, the missing sworn statements by five key individuals including the Departmental Chief, the KAHC COR and the WRAMC Program Manager inhibit further substantiation of a violation of the Anti-deficiency Act. However, there is significant evidence in the sworn statements that were provided to warrant further investigation. My Anti-deficiency Act concerns centered around violation of Title 31, United States Code, Section 1342, Limitation of Voluntary Services as they relate to acceptance of personal services not approved.

In closing, the incongruent testimony of the four witnesses, the lack of witness testimony from five of the nine (minimum) witnesses requested by MEDCOM combined with an investigation led by a senior medical officer with no contracting experience nor Federal Acquisition Regulation (FAR) understanding, significantly undermines the credibility of the Army’s position as stated in the report provided. Would the Army assign an Engineer to lead an investigation into medical malpractice? Also, this incomplete report violates the Presidential edict on transparency and open government as discussed in Presidential Memorandum of January 21, 2009 on this subject by not fully disclosing all investigative material pertaining to this unclassified Whistleblower concern. Finally, the Army’s statement that the KAHC policy regarding the Awards, Recognition and Acknowledgements (ARA) Program has been updated as a result of this investigation is not correct as of the date of this letter. The policy posted on the Kenner Army Health Clinic Command INTRANET and currently used is dated August 23, 2012 and signed by the previous commander, COL Joseph Pina. Again thank you for your time, effort, and consideration.

Very Respectfully,



Amy Trotto, Whistleblower