



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 30, 2015

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

Re: OSC File No. DI-13-3687

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find a copy of the National Council on Disability's (NCD) investigative reports based on disclosures of wrongdoing at NCD made to the Office of Special Counsel (OSC). OSC has reviewed the reports and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the allegations and our findings.

The whistleblower, a former employee at NCD who requested anonymity, disclosed that NCD employees engaged in unlawful contracting practices in violation of the Federal Acquisition Regulation (FAR) and related provisions.

The investigation did not substantiate the whistleblower's allegations. NCD determined that employees followed all relevant contracting requirements, properly used their contracting authority, and appropriately responded to all the allegations raised by the whistleblower. I have determined that NCD's reports meet all statutory requirements and that the findings appear reasonable.

The whistleblower's allegations were referred to NCD Chairperson Jeff Rosen to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). At the time of the referral, OSC requested that NCD consider delegating the matter to an outside Office of Inspector General or other independent entity to ensure impartiality and to avoid a conflict if the allegations implicated the Chairperson or other senior officials. Chairperson Rosen delegated his authority to investigate, sign the report, and take action pursuant to 5 U.S.C. § 1213 to NCD Council Member Benro Ogunyipe and the Executive and Finance Committee of NCD (Investigative Team). OSC accepted the delegation based on NCD's representations that Chairperson Rosen had been effectively recused by his delegation, and that Member Ogunyipe and the Investigative Team were not implicated in any way in the wrongdoing alleged and could conduct a fair and impartial review¹. The Investigative Team submitted the NCD's report on November 7, 2014. The

¹ The whistleblower declined to be interviewed in connection with the investigation, believing that a conflict remained. OSC addressed the whistleblower's concerns with the Investigative Team, which further explained its independence from the wrongdoing alleged.

The Special Counsel

The President

September 30, 2015

Page 2 of 3

agency submitted a supplemental report on January 19, 2015. The whistleblower provided comments on the reports on June 8, 2015. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the reports and comments to you.

The whistleblower disclosed that, from 2010 through 2013, NCD employees circumvented laws requiring the General Services Administration (GSA) to approve procurements. Agency policy requires NCD to send procurements to GSA if they exceed the \$3,000 micro-purchase threshold. However, the whistleblower asserted that agency officials executed the contracts themselves, failed to ensure their review by contracting officers (COs), and bypassed requisite contracting procedures. The whistleblower also disclosed that the agency circumvented the requirement to send procurement contracts to GSA by misusing cooperative agreements in violation of the FAR. In addition, the whistleblower asserted that agency officials failed to properly address concerns she raised about these practices.

The Investigative Team determined that the agency was in compliance with all applicable laws and regulations. With respect to the micro-purchase threshold allegation, the NCD reports responded to each of the nine examples that the whistleblower provided. For each contract, the report clarified whether the micro-purchase threshold requirement applied, identified the employees involved, and stated whether it was submitted to GSA. The Investigative Team found that the proper procedures were followed in all cases. In its report, NCD explained that the micro-purchase threshold requirement did not come into effect until September 12, 2013, when NCD adopted its Financial Policies and Procedures Manual (Financial Manual), which included the provision at issue. The manual asserts that the authority and responsibility to contract for authorized supplies and services is vested in the NCD Chairperson or designee. NCD's Financial Manual also provides that the agency maintains authority to initiate and authorize transactions, which are then sent to GSA for processing.

Accordingly, the Chairperson or designee approves procurements and contracts that exceed the micro-purchase threshold. NCD then completes all documentation required for obligation and transmits the documentation to GSA for processing. In addition, the reports explained that pursuant to the FAR subpart 1.602, COs have authority to enter into, administer, or terminate contracts and make related determinations and findings. NCD further clarified that as the agency head, the Chairperson is deemed a CO. NCD also verified this information with GSA. With regard to the nine examples at issue, NCD represented that all the contracts were appropriately processed through GSA and appeared to be in compliance with the FAR. In some instances, the micro purchase threshold did not apply where the contracts were ratified prior to September 12, 2013.

In its reports, NCD also explained its determination that employees did not misrepresent themselves as COs, because they were acting as the Chairperson's designee, and that the FAR and relevant contracting provisions were followed properly. With

The Special Counsel

The President

September 30, 2015

Page 3 of 3

respect to the allegation concerning the misuse of cooperative agreements, the Investigative Team concluded that NCD was in compliance with the FAR, which states that such agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose. Moreover, NCD asserted that the whistleblower's allegations had previously been addressed in an independent audit that was finalized on February 18, 2014. NCD informed our office that the audit did not substantiate the whistleblower's allegations and did not find any violations of the FAR.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted reports and the whistleblower's unredacted comments² to the Chairman and Ranking Member of the Senate Committee on Health, Education, Labor and Pensions and the Chairman and Ranking Member of the House Committee on Education and the Workforce. OSC has also filed copies of the redacted³ reports in our public file and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosures

² OSC found that the whistleblower's comments contained information prohibited from release by law. OSC proposed submitting a revised version of the comments for OSC's public file that would be suitable for release. The whistleblower declined to elect this option. As a result, OSC determined not to place the comments in our public file.

³NCD provided OSC with revised reports, which substituted titles or positions for the names of NCD employees and witnesses referenced therein. NCD cited the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a) as the basis for these revisions to the reports produced in response to 5 U.S.C. § 1213.