



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

INSPECTION REPORT

DOE-OIG-23-01

October 2022

**ALLEGATION REGARDING
DEPARTMENT OF ENERGY
RETALIATION AGAINST
A CONTRACTOR**



Department of Energy
Washington, DC 20585

October 6, 2022

MEMORANDUM FOR THE DIRECTOR, OFFICE OF MANAGEMENT

SUBJECT: Inspection Report on Allegation Regarding Department of Energy Retaliation
Against a Contractor

The attached report discusses our review of allegations regarding management conduct within the Office of Management and Administration. This report contains two recommendations that, if fully implemented, should help ensure that the issues identified during this inspection are corrected. Management fully concurred with our recommendations.

We conducted this inspection from October 2021 through August 2022 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020). We appreciated the cooperation and assistance received during this inspection.

A handwritten signature in black ink, appearing to read "Anthony Cruz".

Anthony Cruz
Assistant Inspector General
for Inspections, Intelligence Oversight,
and Special Projects
Office of Inspector General

cc: Deputy Secretary
Chief of Staff

DOE-OIG-23-01



Department of Energy Office of Inspector General

Allegation Regarding Department of Energy Retaliation Against a Contractor (DOE-OIG-23-01)

WHY THE OIG PERFORMED THIS REVIEW

The Office of Inspector General received an allegation that the Department of Energy's Office of Administrative Management and Support (MA-42), within the Office of Management and Administration, retaliated against a prime contractor by refusing to consider the company for a follow-on contract despite successful performance as the incumbent contractor.

We initiated this inspection to determine the facts and circumstances surrounding the allegation concerning retaliatory actions taken by MA-42 against a prime contractor.

What Did the OIG Find?

We did not substantiate the allegation that MA-42 retaliated against a prime contractor by refusing to consider the company for a follow-on contract despite longstanding successful performance under an ongoing contract. While our inspection found that the contractor did not receive the follow-on contract, we determined that the Department's award decision was not inappropriate or retaliatory in nature. Even though the allegation was unsubstantiated, we identified several actions taken by MA-42 regarding management of the contract and contractor personnel that did not meet the standards of ethical conduct for employees of the executive branch as defined in Title 5 Code of Federal Regulations Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*. An Office of Management and Administration official told us this occurred because she was unaware of any unethical actions taking place. An MA-42 official said he was unaware of the Department's guidance on ethical conduct for Federal employees. However, we determined that both officials received annual ethics training.

What Is the Impact?

Government employees are responsible for ensuring complete confidence in the integrity of the Federal Government. Concerns such as those identified in this report may erode the American public's confidence in the Department and contribute to the appearance that the Department's work is not being conducted with honesty, integrity, and impartiality.

What Is the Path Forward?

To address the issues identified in this report, we have made two recommendations that, if fully implemented, should help ensure that the issues identified during our inspection are corrected.

BACKGROUND

In December 2017, the Department of Energy's Office of Administrative Management and Support (MA-42) entered into a contract for electronic services at its facility in Washington, DC. MA-42's mission is to ensure the effective management and integrity of Department programs, activities, and resources by developing and implementing Department-wide policies and systems in a wide variety of areas including administrative services. As such, MA-42 utilizes numerous contractors that perform a variety of work, such as electronic services, as well as mail services, shuttle, parking, and transportation. The contract ended in June 2021, and the contractor performed successfully throughout the term of the contract. At this time, the Department consolidated several of the services offered by various contracts into one contract for media services, which was awarded to a new contractor beginning in July 2021. We did not identify any indication that the new contract was inappropriately awarded under the Small Business Administration's 8(a) program.

On May 4, 2021, the Office of Inspector General received an allegation regarding MA-42. Specifically, the complainant alleged that the Department engaged in retaliatory actions by refusing to consider the company for a follow-on electronic services contract despite longstanding successful performance and excellent Contractor Performance Assessment Reporting System ratings. According to the complainant, MA-42's actions were in response to the contractor's reluctance to facilitate personal services under the contract and its decision to terminate an employee with whom a member of MA-42 management had a personal relationship.

We initiated this inspection to determine the facts and circumstances surrounding the allegation concerning retaliatory actions taken by MA-42 against a prime contractor.

RETALIATORY ACTIONS

We did not substantiate the allegation that MA-42 retaliated against a prime contractor for reluctance to facilitate personal services or for terminating a contract employee with whom a member of MA-42 reportedly had a personal relationship. While our inspection found that the contractor did not receive the follow-on contract, we did not identify any criteria limiting the Department from awarding the contract to another contractor. In addition, we did not determine that there was a personal relationship outside of work between MA-42 management and the subject contract employee prior to being hired by the complainant. Finally, we did not identify any actions indicating that the award to another contractor was an act of retaliation.

OFFICE OF ADMINISTRATIVE MANAGEMENT AND SUPPORT CONCERNS

While we did not substantiate the retaliation allegation, we identified several MA-42 actions regarding management of the contract and contractor personnel that did not appear to meet the requirements of Federal Acquisition Regulation 37.104, *Personal services contracts*, or the Standards of Ethical Conduct for employees of the executive branch as defined in Title 5 Code of Federal Regulations Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*. MA-42 directed a prime contractor to create a position and hire a particular individual to perform work that was outside of the contractor's scope of work. Because MA-42 directly

oversaw this work, it created the appearance that the contract employee was providing personal services. Finally, MA-42 shared both confidential financial information and information protected by *The Privacy Act* with the contract employee even though the employee had no need to know. Given that all actions involved the same MA-42 official and contractor employee, these actions create the impression of a personal relationship between the two as well as a lack of impartiality regarding the contract employee. As such, some of the actions were not in accordance with the eighth standard of ethical conduct, which requires Federal employees to act impartially and not give preferential treatment to any individual. In addition, the fourteenth standard of ethical conduct notes that Federal employees shall avoid actions that create the appearance of violating the law or the Standards of Ethical Conduct.

An MA official told us this occurred because she was unaware of any unethical actions taking place. An MA-42 official said he was unaware of the Department's guidance on ethical conduct for Federal employees. Specifically, when we discussed all of our concerns with one MA-42 official, he acknowledged his actions as inappropriate and overreaching. However, he added that nobody informed him that he was doing anything wrong, and he never received training related to administration and oversight of contracts. However, we determined that both officials involved in these instances had completed the Department's annual Ethics Training course during the years in which these instances occurred. This training is mandatory for all employees who file confidential or public financial disclosure reports and fully covers the requirements of Title 5 Code of Federal Regulations Part 2635.

Personal Services

We found that MA-42 management created the appearance of obtaining personal services by inserting a position within two contracts and directly assigning tasks to the positions that were unrelated to the contractor's statements of work. Federal Acquisition Regulation 37.104, *Personal services contracts*, states that a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel and requires that such services only be obtained under contract when specifically approved by U.S. Congress, which was not obtained in this case. In addition, the Department's *Acquisition Guide* states that a personal services contract results when Government personnel assume the role of directly instructing, supervising, or controlling a contractor employee's work and directs Government personnel to avoid even the appearance of a personal services relationship with contractor personnel. Finally, the Department's publication, *An Acquisition Guide for Executives*, directs executives to use care in working with support contractors, including administrative/clerical support, to avoid the appearance of an employer-employee relationship. The Guide further states not to direct contractors to perform any tasks, specifies that contractors are not Department employees, and specifies that Federal employees are not authorized to direct or influence contractor staffing decisions.

In the first instance, an MA-42 official directed the contractor to hire a specific individual to provide a broad range of consulting, management, and analytical support for the Department. Based on this direction, the Contracting Officer added a position description to the contract. However, the contractor's statement of work specified that the contractor would provide maintenance, operations, system design and installation, engineering, administrative and

management support for the radio frequency, audio frequency, and television and satellite communications, as well as other miscellaneous electronic systems for Department Headquarters in the Greater Washington, DC area.

However, the contract employee hired to fill the position performed tasks not related to consulting, management, or analytical support for electronic services. Specifically, he performed a number of tasks at the direct request of an MA-42 official, including review and revision of contracts for transportation, courier services, and graphics services; a compilation of a COVID-19 work plan for MA-42's Office of Administrative Management and Support; an analysis of parking garage revenue; a preparation of shuttle bus ridership data; and numerous other duties not related to the contractor's electronic services statement of work. Our review of documentation showed that the work performed was related to numerous contracts other than the contract that the contract employee was assigned. Further, the MA-42 official exercised relatively continuous supervision and control over the contract employee performing the work with tasks assigned or directed by MA-42, rather than the contractor. In fact, the MA-42 official told us the contract employee was acting as a member of MA-42 and identified himself as the contract employee's supervisor.

In another instance, a second contractor provided administrative services for photography, energy technology visual collection, and imaging production. Again, the MA-42 official directed the Contracting Officer to move the position to the second contract. The position description specified the position would provide a broad range of reporting and analytical assistance directly to MA-42. The same individual that filled the position for the first contract was hired to fill this position within a few days of leaving the first contract. However, we found that the contract employee assisted with analysis and reporting unrelated to photography, energy technology visual collection, and imaging production services. For example, the contract employee evaluated a quote submitted for an electronic services contract, which included labor rates and other financial data. Given that the review of a quote for an electronic services contract is unrelated to the provision of photography, energy technology visual collection, or imaging production services, the contract employee's completion of this task and access to labor rates and financial data may appear to be provision of personal services.

Finally, the MA-42 official directed the electronic services contractor to increase the salary for the contract employee performing these tasks. In particular, the MA-42 official sent an email to contractor personnel with direction to increase the contract employee's pay rate by 6 percent. The contractor replied that they anticipated providing pay rate increases of 3 percent for all employees in the near future, but the MA-42 official responded that the contract employee's increase should be effective immediately and only applied to that employee.

The MA-42 official that directed the contract employee told us that MA-42 had lost valuable personnel, and current Federal staff did not possess the skills necessary to perform the work. He also stated that the practice of adding positions to contracts to ensure work is accomplished is widely used across the Department, including directing that a specific person be hired by a contractor. Finally, he told us that nobody informed him that he was doing anything wrong and that he never received training related to administration and oversight of contracts. However, this individual's supervisor told us it is unacceptable to direct the contractor in hiring, pay, or

tasks, and she maintained that she was unaware of any situation where this was happening. We noted that this management employee of the Office of Management and Administration was included on emails that directed the contract employee to conduct these tasks. The manager told us that it is unreasonable that she should have been alerted to an unethical concern because of receiving an email chain from a subordinate manager, which includes directing a contractor to perform a task. Even so, this information was provided to the manager, and, as such, she could have been aware that an ethical concern existed.

Information Disclosure

In one case, the MA-42 official provided information to the contract employee that was protected or confidential. Specifically, the MA-42 official disclosed performance ratings for several Federal employees to the contract employee. The records came from the Department's ePerformance system, which is subject to *The Privacy Act*. *The Privacy Act* prohibits the disclosure of such records unless the disclosure is for routine use or an approved purpose. We noted that the contract's statement of work did not include review of Federal employee performance ratings and that the contract employee was not performing duties related to performance ratings and, therefore, did not have a need to know this information. Further, according to the MA-42 official, he did not have permission to share the performance information.

As described in this report, the MA-42 official also asked the contract employee to evaluate a quote submitted for an electronic services contract. At the time, the contract employee worked for the contractor that submitted the quote, but he was assigned to a contract that provided photography, energy technology visual collection, and imaging production services. As such, his position duties did not include evaluating quotes for other contracts even if those quotes were submitted by the contractor for which he was employed. Further, the Contracting Officer confirmed that contract employees should never evaluate such data. Finally, the quote information included labor rates and other financial data and appeared to be a violation of 18 United States Code 1905 *Disclosure of Confidential Government Information Generally*, which states that an employee of any U.S. department or agency may not disclose any information coming to him or her in the course of his or her official duties, including information relating to the amount or source of any income, profits, losses, or expenditures of any firm, partnership, corporation, or association.

PUBLIC TRUST IN GOVERNMENT

According to the Secretary of Energy, it is imperative that the Department have the trust and confidence of the American public. Further, every job description in the Department carries with it the responsibility to act in a manner that ensures that the American public can have complete confidence that we are performing the Department's work with honesty, integrity, impartiality, and in the spirit of service to others. This includes the obligation to act exclusively in the public interest, without regard to private gain or personal benefit.

Concerns such as those identified in this report may erode the American public's confidence in the Department and contribute to the appearance that the Department's work is not being conducted with honesty, integrity, and impartiality.

RECOMMENDATIONS

We recommend that the Director, Office of Management and Administration direct the Office of Administrative Management and Support to:

1. Ensure that MA-42 officials are aware of the Standards of Ethical Conduct for Federal Employees and act in accordance with the Standards; and
2. Ensure that MA-42 officials involved in the administration and oversight of contracts are appropriately trained in these areas.

MANAGEMENT RESPONSE

Management fully concurred with our recommendations. Management stated that MA officials will take the annual training on the *Standards of Ethical Conduct for Employees of the Executive Branch* and MA leadership will reinforce the expectation that these employees act in accordance with the Standards. Management also stated that MA officials referenced in this report will take the appropriate acquisition management training and be certified as a Contracting Officer Representative, which will help the MA officials have a clearer understanding of their roles.

Management comments are included in Appendix 2.

INSPECTOR COMMENTS

Management's planned corrective actions are responsive to our recommendations.

Appendix 1: Objective, Scope, and Methodology

OBJECTIVE

We initiated this inspection to determine the facts and circumstances regarding the allegation of retaliatory actions taken by Office of Administrative Management and Support against a prime contractor.

SCOPE

The inspection was performed from October 2021 through August 2022. The parties in the allegation were located at Department of Energy Headquarters in Washington, DC. The scope was limited to the facts and circumstances surrounding the allegation concerning the Department's retaliation against a prime contractor by refusing to consider the company for a follow-on contract despite successful performance as the incumbent contractor. Relevant documentation was reviewed for the period from September 2018 through July 2022. The inspection was conducted under Office of Inspector General project number S21OR019.

METHODOLOGY

To accomplish our inspection objective, we:

- Reviewed Federal and Department regulations, policies, procedures, and guidance;
- Held discussions with Department and contractor personnel with knowledge and experience in the inspection areas;
- Reviewed the Department's contract with the prime contractor and associated documentation; and
- Analyzed email correspondence and associated documentation related to the inspection areas.

We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020) as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

Management officials waived an exit conference on September 28, 2022.

Appendix 2: Management Comments



Department of Energy

Washington, DC 20585

MEMORANDUM FOR TERI L. DONALDSON
 INSPECTOR GENERAL

FROM: INGRID KOLB
 DIRECTOR, OFFICE OF MANAGEMENT

SUBJECT: Response to the Office of the Inspector General (OIG) Draft Audit
 Report entitled: *Allegation Regarding Department of Energy
 Retaliation Against a Contractor (DOE-OIG-22-xx)*

Ingrid Kolb

Digitally signed by Ingrid
Kolb
Date: 2022.09.20
09:01:23 -04'00'

Thank you for the opportunity to comment on the Draft Audit Report concerning allegations that the Office of Management (MA) retaliated against a contractor by refusing to consider the company for a follow-on contract despite their long-standing successful performance under an ongoing contract.

The IG investigation was unable to substantiate the allegations, however two recommendations were issued regarding other related management actions that did not meet the standards of ethical conduct for employees of the Executive branch. MA concurs with the IG's recommended actions and has moved forward to implement them with a completion date of September 30, 2022, for all actions.

If you have questions or need additional information, please contact David S. Brown at David.S.Brown@hq.doe.gov.

Attachments

Management Response
IG Draft Report
Allegations Regarding Department of Energy Retaliation
Against a Contractor (DOE-OIG-22-XX)

Recommendation #1: Ensure that MA officials are aware of the Standards of Ethical Conduct for Federal Employees and act in accordance with the Standards.

DOE Response: Concur.

MA officials will take the annual training on the *Standards of Ethical Conduct for Employees of the Executive Branch* and MA leadership will reinforce the expectation that these employees act in accordance with the Standards.

Estimated Completion Date: September 30, 2022.

Recommendation #2: Ensure that MA officials involved in the administration and oversight of contracts are appropriately trained in these areas.

DOE Response: Concur

MA officials referenced in this report will take the appropriate acquisition management training and be certified as a Contracting Officer Representative (COR). The COR training will help the MA officials have a clearer understanding of their roles.

Estimated Completion Date: September 30, 2022.

FEEDBACK

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We aim to make our reports as responsive as possible and ask you to consider sharing your thoughts with us.

Please send your comments, suggestions, and feedback to OIG.Reports@hq.doe.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at 202-586-1818. For media-related inquiries, please call 202-586-7406.