



OFFICE OF INSPECTOR GENERAL

2021-0018-INVI-P – Architect of the Capitol (AOC) Employee/Annuitant Abused Their Authority and Provided Preferential Treatment to AOC Contractors

Suspected Violations of the AOC “Standards of Conduct,” “Government Ethics” and “Contracting Manual” Policies. **Substantiated.**

Suspected Violations of the AOC “Reemployed Retired Annuitants” Policy. **Not Substantiated.**

On August 4, 2021, the AOC Office of Inspector General (OIG) received a referral memorandum from Diversity, Inclusion and Dispute Resolution Office (DI/DR) reporting that on August 3, 2021, DI/DR received information pertaining to Abuse of Authority and Waste of United States (U.S.) government funds.

According to DI/DR, a former Project Scheduler, Project Management Division, Office of the Chief Engineer (OCE), was concerned that McDonough Bolyard Peck Architecture, Engineering, Consulting, Operations and Maintenance (MBP AECOM), the construction manager as agent (CMA), was performing the Integrated Cost Schedule Risk Analysis (ICSRA) for the Cannon House Office Building Renewal (CHOBr) Project. According to the former employee, this is a task the government would perform. The employee heard from other employees that the CMA contractors were friends of Mr. Bernard Ungar, former GS-15 [Retired], Capital Project Executive, OCE, and possibly receiving preferential treatment. The employee reported the work was unnecessary, expensive and placed the AOC at risk for fraud.

The employee indicated another AOC employee, who wished to keep their identity confidential (Confidential Reporter or CR), asked them to provide their professional expertise by reviewing one CHOBr Project construction build schedule. After reviewing multiple documents for compliance, the employee realized that the scheduling specification was not consistent across all AOC projects, thereby creating risk. They found the schedule to be non-compliant with a cost variance. They reported findings via email on July 23, 2021, to Ungar and other team members.

Ungar responded to their email stating the AOC was acting in accordance with the guidance provided by the U.S. Government Accountability Office (GAO). Ungar further referenced the use of the ICSRA¹. The employee reviewed the GAO criteria and later noted that ICSRAs were conducted at the beginning of each phase in a multiphase project citing a reference to Mr. David T. Hulett, who is an author and leading subject matter expert. They also noted that Hulett was a CMA subcontractor for the CHOBr

¹ A risk analysis of the cost estimate is conducted using the resource-loaded project schedule where the project budget (without any embedded contingency amounts) is assigned to the schedule activities they support. Retrieved from http://www.projectrisk.com/cost-schedule_risk_analysis.html.



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Project and they believed AOC employees were picking and choosing which GAO standards to follow.

The CR informed the employee that Ungar called CHOBr leadership and requested their removal from all meetings because they embarrassed him in the email. Due to the threat of reprisal, the employee reported the incident to DI/DR and together, they tried to determine what in the employee’s email caused Ungar to personally threaten their employment.

History of ICSRAs Being Performed at AOC

In 2014, the GAO conducted an audit of AOC construction cost estimate and scheduling functions at the request of the Committee on House Appropriations. The report stated that “AOC guidance does not substantially conform to leading practices related to developing cost estimates that are accurate and credible.” As a result, GAO recommended “the AOC conduct quantitative risk and uncertainty analyses to obtain the range of likely costs and associated confidence levels.”² Prior to joining the AOC as a rehired annuitant, Ungar retired from the GAO as Director, Physical Infrastructure Issues after over 40 years of employment. Based on Ungar’s expertise in this domain and his familiarity with the GAO, the former OCE director, Ms. Anna Franz, retired SR, recruited Ungar to work on the new criteria for AOC. Subsequently, the AOC made the decision to complete a *quantitative risk analysis*³ in accordance with GAO’s guidelines⁴ for AOC construction projects over \$10 million in accordance with this report. According to Ungar, ICSRAs cost between \$100,000 to \$150,000 each iteration, depending on the complexity of the construction project. Ungar stated that with Franz’s influence, AOC placed language requiring risk assessments in AOC budget guidance every year since 2014.

To determine if Ungar used his previous position to selectively enforce GAO standards or promoted favoritism towards certain individuals per the allegation, the OIG investigator asked if he had any past or present, personal or professional relationships between CMA employees. Ungar was asked if he knew any current or former CMA contractors or subcontractors from his previous positions with the AOC or the GAO.

² Architect of the Capitol: Incorporating All Leading Practices Could Improve Accuracy and Credibility of Projects’ Cost Estimates, GAO-14-333 (Washington, D. C.: Mar. 25, 2014).

³ According to the GAO, cost estimating involves collecting and analyzing historical data and applying quantitative models, techniques, tools, and databases to predict a program’s future cost. GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs (Supersedes GAO-07-1134SP) (March 02, 2009, Retrieved from <https://www.gao.gov/assets/gao-09-3sp.pdf>).

⁴ Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Program Costs, GAO-20-195G, (March 12, 2020). and GAO Schedule Assessment Guide: Best Practices for Project Schedules, GAO-16-89G, (December 22, 2015).



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During the investigation the OIG determined that Ungar was not forthcoming about his relationship with Sagar Khadka, former Project Manager, CMA and Hulett. When asked, Ungar stated he worked with Khadka intermittently at the U.S. Capitol Visitor Center between 2007-2008. Additionally, Ungar indicated he knew Hulett as the subcontractor on a GAO contract when Ungar worked at GAO between 2007-2008. Khadka conducted the first ICSRA as a CMA employee. Hulett, a recognized subject matter expert, also served as a GAO consultant and contributed to the GAO guidelines on quantitative risk assessments. Khadka and Hulett partnered in their oversight responsibilities to conduct the risk assessments under the CMA contract through 2021.

Ungar was not a supervisor or Contracting Officer's Representative (COR), nor was he trained to negotiate contracts, but he knew Hulett's ICSRA fees from previous price proposals and work with Khadka. Ungar noted that he and Hulett had discussed prices and he told Hulett his hourly fees were higher than what the government would accept for contracts. Ungar later stated he wasn't involved in any of the CMA contract negotiations but said he asked Hulett to consider reducing his fees for the contract. Hulett did change his fees to the acceptable level and was hired as a CMA subcontractor to conduct ICSRAs for the CHOBr Project between 2013-2020.

Additionally, the OIG discovered an email to Hulett, an AOC CMA subcontractor, from an AOC CMA contractor, which cc'd Ungar with the ICSRA Statement of Work (SOW) for review prior to submittal to the AOC.

The investigation substantiated through testimony and documentation review that Ungar has known or been acquainted with Hulett since 2007 (15 years). Ungar has never received the appropriate COR training required or letter of appointment from the Chief of Supplies, Services & Material Management Division authorizing approved equivalencies or substitutions to the training requirements to negotiate contracts on behalf of the AOC. He was in violation of the AOC's Contracting Manual, Order 34-1, when he negotiated Hulett's hourly fee and informed him of AOC's maximum acceptable hourly fee. The OIG could not find any evidence of criminal violations associated with Ungar.

The OIG referred the investigation findings and alleged violations to the U.S. Government Accountability Office to determine whether, in consideration of all laws, statutes, orders and rules, their recommendation recorded in GAO-14-333, has been adequately addressed. The OIG would also like GAO to ascertain if it was appropriate for the AOC to designate a CMA or other entity and its subcontractors to perform this work or if the AOC should competitively bid the ICSRA process to control for independence and transparency to mitigate perceived collusion and favoritism.

The allegation that Ungar violated AOC Order 335-7 Reemployed Retired Annuitants May 10, 2021, Extension of Temporary Appointment for Reemployed Retired Annuitants was not substantiated as



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extensions of temporary appointments for reemployed retired annuitants may be made based on the criteria outlined in the policy and approved by the Architect.

The OIG's investigation focused solely on violations of law and AOC policies pertaining to Standards of Conduct, Government Ethics, and violations of the Contracting Manual, all of which were substantiated, and not interoffice relationships and management styles.

Final Management Action: The OIG substantiated that Ungar violated AOC policy when he was not forthcoming about his relationship with AOC contractors. Ungar negotiated Hulett's hourly fee and informed him of AOC's maximum acceptable hourly fee. This is the second OIG investigation in which a senior management official at the AOC who was not a COR or did not have AOC approved COR training, negotiated price with a contractor prior to the bid being submitted. The investigation is closed. Ungar retired from government service April 9, 2022.