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Please note that throughout this report where (b)(7)(C) is asserted, (b)(6) applies equally.

REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

Disclosures of Non-Public Procurement Information and Lack of Candor at Headquarters

Case No. OIG-515

Introduction

On April 13, 2009, the Securities and Exchange Commission ("SEC" or "Commission") Office of Inspector General ("OIG") opened an investigation as a result of information received from several anonymous complaints from the OIG's Ethics and Compliance Employee Hotline.

The primary complaint related to an SEC procurement for (b)(7)(C) (b)(7)(C). Three contractors, including (b)(7)(C) had submitted bids for the project. One of the complaints was received from the law firm of Odin, Feldman and Pittleman, outside counsel for (b)(7)(C) and alleged that Office of Financial Management ("OFM") (b)(7)(C) (who was part of a technical evaluation panel for the procurement) disclosed non-public procurement information relating to the contract bids for the (b)(7)(C) project, to SEC contractor (b)(7)(C). According to the complaint, (b)(7)(C) called (b)(7)(C) into his office and told (b)(7)(C) that (b)(7)(C) was not going to be chosen as the contracting company for the (b)(7)(C) project.

The other complaints alleged generally that (b)(7)(C) and (b)(7)(C) (b)(7)(C) in OFM, had been awarding contracts to their friends at three contractors, (b)(7)(C), (b)(7)(C) and (b)(7)(C).

The OIG investigation substantiated the allegation that (b)(7)(C) disclosed non-public information to (b)(7)(C) regarding the (b)(7)(C) project and also found that (b)(7)(C) disclosed sensitive non-public information concerning the same procurement to (b)(7)(C). The OIG investigation did not substantiate the allegations that (b)(7)(C) and (b)(7)(C) improperly awarded contracts to their friends.

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Scope of Investigation

The OIG took the sworn testimony of the following individuals:

- (1) (b)(7)(C) Financial Operations Branch, OFM, (May 27, 2009) and (July 27, 2009);
- (2) (b)(7)(C) Finance and Accounting Office, OFM, (July 7, 2009);
- (3) (b)(7)(C) Office of Administrative Services, Office of Acquisitions, (July 8, 2009);¹
- (4) (b)(7)(C), an SEC contractor and (b)(7)(C) (July 10, 2009); and
- (5) (b)(7)(C) Information Technology Specialist OFM (July 7, 2009).

In addition, OIG interviewed (b)(7)(C) (b)(7)(C) OFM, on August 7, 2009.

Statutes and Regulations Regarding Disclosure of Nonpublic Information and Standards of Conduct

41 U.S.C. § 423

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. In the case of an employee of a private sector organization assigned to an agency under chapter 37 of title 5, United States Code [5 USCS §§ 3701 et seq.], in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.

(2) Paragraph (1) applies to any person who--

¹ (b)(7)(C)

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(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and
(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information.

A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(f) Definitions. As used in this section:

(1) The term "contractor bid or proposal information" means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h), with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as "contractor bid or proposal information," in accordance with applicable law or regulation.

(2) The term "source selection information" means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

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(I) The reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as "source selection information" based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

Federal Acquisition Regulation

48 C.F.R. § 3.101-4; Subpart 3.1-Safeguards; 3.101 Standards of conduct; 3.101-1 General

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

3.104-3 Statutory and related prohibitions, restrictions, and requirements

(a) Prohibition on disclosing procurement information (subsection 27(a) of the Act).

(1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104-4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who-(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and (ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information (subsection 27(b) of the Act). A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source

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selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).

(1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must (i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and (ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104-5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because (A) The person is no longer an offeror in that Federal agency procurement; or (B) All discussions with the offer or regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment" in 5 CFR 2635.603(b). In addition, unsolicited communications from offers regarding possible employment are considered contacts.

SEC Non-Disclosure Agreement

Part A. States for purposes of this Agreement, "confidential or non-public information," is defined as information generated by or in the possession of the SEC that is commercially valuable, trade secret, market sensitive, proprietary, related to an SEC enforcement or examination matter, subject to privilege, protected by the Privacy Act (5 U.S.C. § 552a), or otherwise deemed confidential or non-public by an SEC division director or office head, and is not otherwise available to the public. This definition applies to confidential or non-public information in any form, including documents, electronic mail, computer files, conversations, and audio or video recordings. For purposes of this Agreement, examples of confidential or non-public information include corporate financial data provided to the SEC that has not been made public; SEC planned or contemplated courses of action regarding SEC examinations, investigations, and enforcement actions; and SEC personnel information covered by the Privacy Act, 5 U.S.C. § 552a.

Part C. States that the signer of the agreement acknowledges that the SEC Regulation Concerning Conduct of Members and Employees and Former

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Members and Employees of the Commission expressly prohibits the improper use and unauthorized disclosure of confidential or non-public information or documents. See 17 C.F.R. § 200.735-3(b)(1) & (b)(7).² The signer agrees to be bound by the provisions of § 200.735(b)(1) & (b)(7) and the terms set forth in the agreement. The signer agrees not to disclose to any unauthorized person any confidential or non-public documents or information to which he or she has access in the performance of duties under the underlying Contract.

Part F. Defines "unauthorized person" as anyone other than (1) an officer of employee of the SEC, (2) and employee of the prime contractor who has executed a non-disclosure agreement with the SEC under the Contract, (3) an employee of a subcontractor who has executed a non-disclosure agreement with the SEC under the Contract, and whose employer advises the prime contractor as such, or (4) any individual that the Contracting Officer expressly designates as a person authorized to receive the confidential or non-public information at issue.

Part H. States if there is doubt as to whether a document or information is confidential or non-public, or whether a proposed recipient of a document or information is an unauthorized person, the employee or contractor shall request clarification from the Contracting Officer.

Part J. States in part that the employee or contractor acknowledge that disclosure of confidential or non-public information in violation of this agreement could subject me to administrative, civil, or criminal action, as appropriate, under the laws and regulations applicable to the information involved. Violation of this Agreement may also constitute a ground for termination of the Contractor's underlying Contract with the SEC, and for suspension and debarment from receiving future federal contracts.

² 17 C.F.R. §200.735-3(b)(1) provides that a member or employee of the Commission shall not "[e]ngage, directly or indirectly, in any personal business transaction or private arrangement for personal profit the opportunity for which arises because of his or her official position or authority, or that is based upon confidential or nonpublic information which he or she gains by reasons of such position or authority." 17 C.F.R. § 735-3(b)(7) provides that a member or employee of the Commission shall not "[d]ivulge to any unauthorized person or release in advance of authorization for its release any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) in contravention of the rules and regulations of the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances whether the Commission has determined to accord such information confidential treatment. [Footnote omitted.]"

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Results of Investigation

I. (b)(7)(C) Disclosure of Non-Public Procurement Information

(b)(7)(C) The OIG investigation disclosed that on February 17, 2009, (b)(7)(C) e-mailed (b)(7)(C) asking him to go to lunch during the week of February 23, 2009 to discuss a new (b)(7)(C) that would allow the Office of Administrative Services ("OAS") to (b)(7)(C) (b)(7)(C) E-mail from (b)(7)(C) to (b)(7)(C) dated February 17, 2009 at Exhibit 1.

According to (b)(7)(C) sworn testimony and his contemporaneous notes, during the lunch, which occurred on February 27, 2009 at a restaurant in Springfield, Virginia, (b)(7)(C) referenced an ongoing solicitation involving the SEC's (b)(7)(C) project³ and informed (b)(7)(C) that two contractors, (b)(7)(C) and (b)(7)(C) had both bid on the project. See Transcript of Testimony of (b)(7)(C) Tr.) at 17 dated July 10, 2009, at Exhibit 3; (b)(7)(C) notes attached as Exhibit 4. According to (b)(7)(C) notes, (b)(7)(C) "did not ask for this (or any other information)" about the solicitation, but (b)(7)(C) "just offered it out of nowhere." *Id.*

A few weeks later on March 17, 2009, as (b)(7)(C) was passing by (b)(7)(C) office, (b)(7)(C) asked him to come in because he had "something funny to tell [him]." *Id.* (b)(7)(C) asked (b)(7)(C) to shut the door and proceeded to inform him that "(b)(7)(C) proposal was crap," and that because (b)(7)(C) pricing on their proposal was one of the two sky-high ones proposed," the "bid was going to the lower priced proposal (b)(7)(C) (b)(7)(C)." *Id.*

This episode was corroborated by statements contained in contemporaneous notes maintained by (b)(7)(C) and obtained by the OIG. In sworn testimony, (b)(7)(C) corroborated the statements in his notes and confirmed that (b)(7)(C) did in fact tell him that "the (b)(7)(C) proposal was crap." (b)(7)(C) Tr. at 24-26.

In his initial sworn testimony taken in this investigation, however, (b)(7)(C) denied having discussions with (b)(7)(C) regarding (b)(7)(C) prior to the solicitation being issued. Transcript of Testimony of (b)(7)(C) ("May 27, 2009 (b)(7)(C) Tr.") at 60, dated May 27, 2009, at Exhibit 5. Rather, (b)(7)(C) testified that "The only contact that I had with (b)(7)(C) was after the panel had rendered a decision or a conditional decision." May, 27, 2009 (b)(7)(C) Tr. at 64.

³ The (b)(7)(C) bid sought a contractor to provide the U.S Securities and Exchange Commission (SEC) with (b)(7)(C) technicians to perform (b)(7)(C) (b)(7)(C) services in support of the SEC's (b)(7)(C) See Solicitation Number (b)(7)(C) attached hereto as Exhibit 2.

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When (b)(7)(C) was specifically asked during his testimony if he told (b)(7)(C) that (b)(7)(C) was going to lose the solicitation, (b)(7)(C) responded, "That is an absolute lie." Exhibit 5 at 68. (b)(7)(C) further testified that he had no motive to provide (b)(7)(C) with information. *Id.* at 71.

However, after taking (b)(7)(C) testimony and reviewing (b)(7)(C) detailed notes of the conversations between (b)(7)(C) and (b)(7)(C) the OIG contacted (b)(7)(C) counsel, (b)(7)(C), and informed (b)(7)(C) that his client statements were inconsistent with other testimonial evidence. (b)(7)(C) informed the OIG that he would talk to his client, and subsequently advised that (b)(7)(C) would be available to reappear for testimony. Exhibit 6.

The OIG furnished (b)(7)(C) with a copy of his first testimony, and provided him the opportunity to review and clarify his testimony. Exhibit 7. (b)(7)(C) included in his clarifications the following statement: "Upon a review of my calendar, I found that (b)(7)(C) and I had lunch on February 17, 3009 [sic]." *Id.* at 3.

(b)(7)(C) reappeared before the OIG for his second testimony on July 27, 2009. Transcript of Testimony of (b)(7)(C) ("July 27, 2009 (b)(7)(C) Tr."), at Exhibit 8. During this second testimony, (b)(7)(C) acknowledged having lunch with (b)(7)(C) but still denied that he spoke to (b)(7)(C) about (b)(7)(C) or (b)(7)(C) during this lunch meeting. *Id.* at 8. However, (b)(7)(C) admitted that he may have shared some inappropriate information with (b)(7)(C) regarding the solicitation, stating, "It's possible that I inadvertently said something to him in a casual conversation." *Id.* at 14.

The OIG investigator specifically asked (b)(7)(C) if he told (b)(7)(C) that "the (b)(7)(C) proposal was crap," and (b)(7)(C) responded:

I think it's possible I said something to the effect that it was not well written, which it wasn't, and again, he (b)(7)(C) was not part of the solicitation. So I wasn't intentionally providing him any information. *Id.* at 15.

(b)(7)(C) further testified, "If I said something inappropriately, if -- I take full responsibility for it." *Id.* at 27.

The OIG investigation further revealed that on March 5, 2009, less than three weeks before (b)(7)(C) conversation with (b)(7)(C) (b)(7)(C) signed the Certificate of Non-Disclosure and Financial Interest regarding Ref: (a) (b)(7)(C) (b)(7)(C) RFQ No. (b)(7)(C) which stated in pertinent part:

I have read and understand the requirements of reference (a), and am aware of my obligation not to divulge any aspects of this procurement. See Exhibit 9.

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Accordingly, (b)(7)(C) violated this Certificate of Non Disclosure by divulging critical information about the procurement, specifically, information pertaining to the evaluation of one of the bids and the decision to award the contract to a particular bidder. The testimony and evidence clearly showed that (b)(7)(C) divulged this information to (b)(7)(C) an SEC contractor who had no involvement with the procurement. In addition, (b)(7)(C) violated 41 U.S.C. § 423 and FAR 3.104-3(a) by knowingly disclosing the source selection information before the award of a federal procurement was made, to which the information pertained. In addition, (b)(7)(C) provided this critical source-selection information to (b)(7)(C) of (b)(7)(C) the very entity who was competing for the procurement in question.⁴

II. (b)(7)(C) Disclosure of Non-Public Procurement Information to (b)(7)(C) Who had a Financial Interest in the Procurement

Shortly after (b)(7)(C) improper disclosure to (b)(7)(C) that (b)(7)(C) proposal “was crap” and (b)(7)(C) was not going to be awarded the contract, the OIG investigation found that (b)(7)(C) improperly disclosed this information to (b)(7)(C) of (b)(7)(C) and discussed the information with (b)(7)(C) outside counsel.

(b)(7)(C) own notes indicate that “[s]ubsequently I mentioned this [conversation with (b)(7)(C) to (b)(7)(C) on the evening of March 17, 2009.” Exhibit 4. (b)(7)(C) stated that at the time, he did not realize that it was a “problem” to discuss the solicitation involving (b)(7)(C) with (b)(7)(C) (b)(7)(C) Tr. at 10.

In fact, the record shows that (b)(7)(C) only reported the disclosure by (b)(7)(C) to the SEC’s Contracting Office after he was “told by (b)(7)(C) outside counsel that a preparation for protest citing procurement violations was already underway . . . and that as a contractor, [he] was subject a recent law that was passed requiring [him] to report this incident to [his] Contracting Officer.” Exhibit 4.

We found that (b)(7)(C) did not inform his Contracting Officer of the conversation he had with (b)(7)(C) during the February 27, 2009 lunch and only after receiving instructions from (b)(7)(C) outside counsel, (b)(7)(C) reported the procurement violation to (b)(7)(C) Transcript of Testimony of (b)(7)(C) dated July 8, 2009 (“(b)(7)(C) Tr.”) at 7 at Exhibit 10. (b)(7)(C) confirmed in testimony that on or about March 19, 2009, (b)(7)(C) came to his office and informed him that (b)(7)(C) had told him procurement sensitive information. *Id.* According to (b)(7)(C) he then asked (b)(7)(C) the Contracting Officer, to come down to his office to hear (b)(7)(C) story. *Id.* at 8.⁵

⁴ (b)(7)(C) notes indicate, “(b)(7)(C) knows that (b)(7)(C) works at (b)(7)(C) Exhibit 4. (b)(7)(C) denied being aware at that time that (b)(7)(C) at (b)(7)(C) July 27, 2009 (b)(7)(C) Tr. at 18 at Exhibit 8.

⁵ (b)(7)(C) indicated in his notes that “[o]n March 19, 2009, after a sleepless night, I decided to report the event to an official in the Office of Acquisitions at SEC. That Official brought in my Contract Officer and I recounted the events again.” Exhibit 4.

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(b)(7)(C) testified that (b)(7)(C) indicated he was being told information about the selection information and that "[t]here were some aspects of the technical proposal that he (b)(7)(C) was being told that he had no business being told as someone not involved in the evaluation." *Id.* Further, (b)(7)(C) testified that after hearing the information from (b)(7)(C) "It was very obvious that we needed to stop this. . . . We needed to cancel the solicitation." *Id.* at 8, 9. At that point, (b)(7)(C) instructed (b)(7)(C) to write down what he had told him and (b)(7)(C) *Id.* at 9.

The next day on March 20, 2009, at 1:40 pm, (b)(7)(C) sent (b)(7)(C) Contracting Officer (b)(7)(C) an e-mail which stated in pertinent part:

(b)(7)(C) was made aware of a conversation held on March 17, 2009, between (b)(7)(C) and (b)(7)(C) wherein (b)(7)(C) (b)(7)(C) who appears to have been a member or advisor to the SEC's technical evaluation panel, asked (b)(7)(C) to come into his office and close the door. (b)(7)(C) then told (b)(7)(C) unsolicited, that (b)(7)(C) had contacted via telephone both (b)(7)(C) and its subcontractor (b)(7)(C) to alert them to the fact that they needed to submit more resumes in their technical proposal under the above-referenced solicitation as the three that (b)(7)(C) had submitted were insufficient. (b)(7)(C) further stated that three proposals had been received by the SEC from (b)(7)(C), (b)(7)(C) and (b)(7)(C) and that (b)(7)(C) was disqualified because, among other things, some of the resumes in (b)(7)(C) proposal were subsequently included in the (b)(7)(C) submittals as personnel being proposed by (b)(7)(C) subcontractor (b)(7)(C). Unlike (b)(7)(C) at no point during this procurement was (b)(7)(C) ever afforded an opportunity to respond to questions about its resumes or other aspects of its technical proposal or given the chance to address any concerns SEC may have had regarding its submission, at no point in time was (b)(7)(C) given any opportunity to submit a revised proposal; nor was (b)(7)(C) ever informed that it was being disqualified or otherwise eliminated from consideration under this procurement. Exhibit 11.

(b)(7)(C) testified that the solicitation was canceled after he became aware of what had occurred. *Id.* at 18. (b)(7)(C) added that (b)(7)(C) would be in a position to resubmit for the contract. *Id.* On or about April 7, 2009, (b)(7)(C) met with (b)(7)(C) (b)(7)(C) in OFM, (b)(7)(C) and (b)(7)(C) wherein (b)(7)(C) was informed that the solicitation was cancelled and that he would be replaced on the evaluation panel. *See* Statement from (b)(7)(C) at Exhibit 12. As of the time of the writing of this report of investigation, the solicitation remains on hold.

Accordingly, the OIG investigation found that (b)(7)(C) violated the provisions of a Non-Disclosure Agreement he signed on August 18, 2009, in which he expressly agreed

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to be bound by 17 C.F.R. §§ 200.735(b)(7), and to not disclose any confidential or non-public information to which he had access during the performance of his duties under his contract, to any unauthorized person. He also failed to abide by Part H of that agreement, which states, "If there is doubt as to whether a document or information is confidential or non-public, or whether a proposed recipient of a document or information is an unauthorized person, I shall request clarification from the Contracting Officer." See Exhibit 13 at 2 part H. We also found that (b)(7)(C) violated 41 U.S.C. § 423 and FAR 3.104-3(a) by divulging source-selection information regarding the procurement to representatives of (b)(7)(C) (b)(7)(C) also violated 17 C.F.R. § 200.735(b)(1), by which he also agreed to be bound in the non-disclosure agreement he signed, as his disclosure gave (b)(7)(C) company an opportunity to re-compete for the solicitation, thereby enabling him to profit indirectly from his position as a government contractor.

III. OFM Contracts Allegedly Awarded to Friends

The OIG also investigated the allegations that OFM (b)(7)(C) and (b)(7)(C) had awarded contracts to their friends at (b)(7)(C) (b)(7)(C) and (b)(7)(C). Specifically, one of the complaints alleged that (b)(7)(C) used (b)(7)(C) to bring in her friend as a sub-contractor enabling them to "reap substantial financial benefits."

(b)(7)(C) denied having personal relationships with any of the contractors in question. (b)(7)(C) specifically testified under oath that she did not have any personal relationships with any of (b)(7)(C) employees. Transcript of Testimony of (b)(7)(C) (b)(7)(C) Tr.) dated July 7, 2009, at Exhibit 14 at 29. Additionally, (b)(7)(C) testified that she did not socialize with any of (b)(7)(C) employees and did not know anyone from (b)(7)(C) except for the current contractors at the SEC. *Id.*

(b)(7)(C) further testified that she did not have any personal relationships with anyone from (b)(7)(C) and did not socialize with any (b)(7)(C) employees. *Id.* at 10. (b)(7)(C) further testified that she had worked with (b)(7)(C) in the past when she worked for the (b)(7)(C) but she did not know any of the contractors who currently worked for (b)(7)(C). *Id.* Additionally, (b)(7)(C) testified that she did not know anyone from (b)(7)(C). *Id.* at 19.

(b)(7)(C) also denied having any personal relationships with any of the contractors and we found no evidence to the contrary. May 27, 2009 (b)(7)(C) Tr. at 30. We spoke to (b)(7)(C) the Contracting Technical Officer (COTR) on the (b)(7)(C) and (b)(7)(C) contracts who testified that (b)(7)(C) knew "a couple of the older gentlemen that are on the contract" on the (b)(7)(C) contract. Transcript of Testimony of (b)(7)(C) (b)(7)(C) Tr.) dated July 7, 2009, at Exhibit 15 at 11. However, (b)(7)(C) explained further that (b)(7)(C) simply had working relationships with these individuals. *Id.*

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The OIG investigation did not uncover any evidence that conflicted with (b)(7)(C) and (b)(7)(C) denials and no evidence to substantiate the allegations that (b)(7)(C) and (b)(7)(C) improperly awarded contracts to friends at the several named contractors.

Conclusion

The OIG investigation uncovered evidence that shows that SEC OFM (b)(7)(C) (b)(7)(C) disclosed non-public source-selection information about an SEC (b)(7)(C) contract solicitation to (b)(7)(C) an SEC contractor who was not part of the solicitation process. In addition, we find (b)(7)(C) lacked candor during his first appearance before the OIG on May 27, 2009.

Additionally, the OIG found that (b)(7)(C) disclosed the same non-public information which involved (b)(7)(C) company, (b)(7)(C) not being awarded a bid in the SEC (b)(7)(C) solicitation to (b)(7)(C) which provided (b)(7)(C) an opportunity to resubmit for the (b)(7)(C) contract.

The other allegations against (b)(7)(C) and (b)(7)(C) were not found to be substantiated.

In light of the foregoing, this matter is being referred to the SEC's Executive Director, Acting Associate Executive Director for Financial Management, Associate Executive Director for Administrative Services, Branch Chief for Operations, and Contracts, Associate Executive Director for Human Resources, Associate General Counsel for Litigation and Administrative Practice, and Ethics Counsel for disciplinary action, up to and including removal from the contract against (b)(7)(C) and up to and including removal for (b)(7)(C)

Submitted

Concur:

Approved:


H. David Kotz

Date:

11.24.09