

## **Agency procurement official who removed contractor for reporting suspected fraud receives no discipline**

Closed 07/22/21

AmeriCorps OIG investigated an allegation of whistleblower retaliation against an employee of an AmeriCorps contractor (complainant), who was removed from his employer's contract with AmeriCorps at the request of the Acting Director for the Office of Procurement shortly after making a protected disclosure. The complainant acted in accordance with AmeriCorps policy, that required him to disclose potential misconduct. The investigation concluded that the complainant was removed from his contract position in part because he made a protected disclosure to the Acting Director of potential fraud on the part of the complainant's supervisor. However, the contract between AmeriCorps and the complainant's employer gave AmeriCorps discretion to order that staff be removed from the contract. Accordingly, the complainant's employer removed him at AmeriCorps' non-discretionary directive and was therefore not liable to him for whistleblower retaliation under 41 U.S.C. § 4712.

While the Acting Director and other AmeriCorps employees did not violate whistleblower protection statutes because the complainant was not employed by AmeriCorps, the OIG recommended that the Acting Director be disciplined for abusing her authority by taking action against the complainant for complying with AmeriCorps' requirement that he report suspected procurement collusion by his supervisor. Further, the OIG concluded that the Acting Director and other AmeriCorps employees failed to adhere to AmeriCorps policy regarding reporting allegations of fraud, waste, and abuse to the OIG, took steps that denied the complainant's confidentiality request and jeopardized AmeriCorps OIG's subsequent investigation, and did not appreciate both AmeriCorps' reporting policy, the contract under which the complainant served both prohibited retaliation or that contractor employees are entitled to whistleblower protections as a matter of law.

In addition to recommending appropriate disciplinary action against the Acting Director and others, the OIG recommended that AmeriCorps: (1) provide mandatory training periodically to all AmeriCorps employees about whistleblower protections afforded to Federal employees, contractors, subcontractors, grantees, and subgrantees, as well as training related to reporting to the OIG; (2) require periodic training for all AmeriCorps supervisors on appropriate and lawful receipt of and response to whistleblower disclosures, including participating in the Office of Special Counsel's (OSC's) 2302(c) certification program; and (3) offer training, issue guidance, and implement targeted monitoring activities, to ensure that contractors, subcontractors, grantees, and subgrantees of AmeriCorps inform their employees in writing of the whistleblower rights and remedies provided, in accordance with 41 U.S.C. § 4712(d). More information on AmeriCorps OIG's administrative recommendations can be found [here](#).

### **Agency/Administrative Actions**

AmeriCorps declined to take formal disciplinary action against the Acting Director, instead electing to counsel her. AmeriCorps concurred with the remaining recommendations. AmeriCorps will expand its existing new employee and annual training to include coverage of contractor, subcontractor, grantee, and subgrantee employee whistleblowers; incorporate training on reporting to the OIG into existing new employee and annual employee training; and establish a new training requirement that addresses how to recognize and process whistleblower reports, and the obligation to refer such matters to the OIG. AmeriCorps will also participate in OSC's 2302(c) program and will offer to review contractor/grantee

training programs to ensure adequate provisions are made to highlight the importance of whistleblowers, the need for reporting without delay to OIG, and the protections afforded to whistleblowers by law.

Case ID 2020-025