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**U.S. OFFICE OF PERSONNEL MANAGEMENT  
OFFICE OF THE INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS**

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# **Management Advisory Report**

**Recommendations for Improvement,  
Pursuant to an Investigation of Improper Contracting  
Practices for the USAJOBS Program**

**Report Number I-12-00464  
April 20, 2016**

**--CAUTION--**

This Management Advisory Report has been distributed to Federal officials who are responsible for the administration of a program impacted by an investigation. This report may contain information compiled for law enforcement purposes, or proprietary data which is protected by Federal law (18 U.S.C. 1905). Therefore, while this report is available under the Freedom of Information Act and made available to the public on the OIG webpage (<http://www.opm.gov/our-inspector-general>), caution needs to be exercised before releasing the report to the general public as it may contain information that was redacted from the publicly distributed copy.

# Management Advisory Report

## INTRODUCTION

The purpose of this Management Advisory Report is to communicate to you the Office of the Inspector General's (OIG's) recommendations for program improvement resulting from our investigation of improper contracting practices for the USAJOBS program by U.S. Office of Personnel Management (OPM) personnel, in violation of the Federal Acquisition Regulations (FAR). We would also like to bring to your attention that the OIG's investigation of this matter was hampered by OPM's inability to produce relevant contract documents in a timely manner. Prior to issuing these recommendations, we solicited comments from OPM. OPM's complete response, dated March 16, 2016, may be found in the Appendix to this Report. We appreciate OPM's feedback.

## EXECUTIVE SUMMARY

On or about May 14, 2012, an OPM employee alleged that they were retaliated against by the former USAJOBS Project Lead, after questioning the methods used to procure work performed by Excella Consulting (Excella). Since the Office of Special Counsel was investigating the alleged retaliation, in order to avoid duplication of effort, the OIG did not investigate the retaliation complaint and focused on the alleged procurement violations.

The OIG's investigation concluded that there were violations of the FAR and OPM contracting policy, including an unauthorized commitment, a Task Order initiated prior to pricing, and efforts by the former USAJOBS Project Lead to limit competition without documented justification for a limited or sole source procurement. These findings are discussed in more detail on page 8 of this report. The recommendations for program improvement arising from this investigation begin on page 10 of this report.

The OIG's investigation established the following, based on interviews and the review of available documentation.

In the 2011 to 2012 timeframe, both DHS and the Department of Defense (DOD) were supporting OPM with the USAJOBS program launch, by providing resources that included both Federal and contract staff. Excella performed work for OPM's USAJOBS program from January 1, 2012 through April 30, 2012, pursuant to a contract between DHS and Northrup Grumman. That DHS contract was for Human Resource Information Technology Support Services, and the relevant Task Order was number HSHQDC-10-J-00452. Northrup Grumman subcontracted the

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work to EPS Advantage, which in turn subcontracted to Excella. The original anticipated period of performance was through September 29, 2012.

However, in a letter dated April 3, 2012, DHS notified Northrup Grumman that DHS was reducing the funds committed to Task Order number HSHQDC-10-J-00452, with the result that DHS funding for Excella's work on USAJOBS would cease effective April 30, 2012.

The OIG's investigation determined that DHS's withdrawal of funding was unexpected and OPM was provided with short-notice of the change. In or about early April 2012, the then-USAJOBS Project Lead began seeking an alternate contracting vehicle that would allow Excella to continue working for USAJOBS after the DHS funding expired on April 30, 2012. Specifically, he sought an existing OPM contract that USAJOBS could use for the short-term, to procure services during May and June 2012. Meanwhile, he also sought a longer-term solution, in the form of a USAJOBS-specific procurement effective July 1, 2012.

## **SHORT TERM SOLUTION: TASK ORDER 11.2.4 ON EHRI's CONTRACT**

For the short-term solution, which was intended to cover Excella's services in May/June 2012, the USAJOBS Project Lead requested assistance from other program offices. OPM's Enterprise Human Resources Integration (EHRI) agreed to assist USAJOBS, by allowing USAJOBS to obtain contractor support in May and June 2012 under an existing EHRI contract, specifically contract number OPM02070039-0274 with the Center for Organizational Excellence, which subcontracted to Excella. It was agreed that USAJOBS would reimburse EHRI for the expense via an Inter-Agency Agreement.

On May 1, 2012, Excella began performing work for USAJOBS under Task Order 11.2.4 on EHRI's contract. The prime contractor, the Center for Organizational Excellence, confirmed that the period of performance for Task Order 11.2.4 was May 1, 2012 to June 30, 2012, which is consistent with reports that Excella continued working for USAJOBS without interruption after DHS funding was withdrawn effective April 30, 2012.

Although Excella began performing Task Order 11.2.4 on May 1, 2012, emails obtained and reviewed by the OIG revealed that the USAJOBS Project Lead did not receive the Center for Organizational Excellence's proposal for Task 11.2.4 until the following day, May 2, 2012. After determining that USAJOBS could not afford the proposed rates, the USAJOBS Project Lead asked the EHRI Acting Director to modify the Task Order requirements from full-time to part-time, in order to reduce the costs. The Acting EHRI Director agreed to do so. They also discussed the Center for Organizational Excellence's mark-up for Excella's services, and the desirability of contracting directly with Excella.

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According to the FAR 43.102(b), “Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.” Clearly, the pricing for Task Order 11.2.4 had not been finalized before Excella began performing the work, since Excella was already working on Task Order 11.2.4 before the USAJOBS Project Lead reviewed the proposal, determined USAJOBS could not afford it, and subsequently modified the requirements,

Investigation also established that on May 10, 2012, USAJOBS obligated \$35,616 for “USAJOBS Data Management Support.” This was the obligation of USAJOBS funds to reimburse EHRI for their contractor’s performance of Task Order 11.2.4. In other words, USAJOBS obligated the funds to repay EHRI more than a week after Excella began performing Task Order 11.2.4. However, in the OIG’s opinion, the date of this internal transfer of funds between OPM program offices is not the critical issue. In our view, the critical question is: When was the contract modification that added and funded Task Order 11.2.4 on the EHRI contract actually issued to the contractor? This modification was outside USAJOBS’s control, as it had to be initiated by EHRI and issued by OPM’s contracting office.

The OIG repeatedly asked OPM’s contracting office for copies of the contract documents relevant to Task Order 11.2.4 under the EHRI contract (i.e., contract number OPM02070039-0274 with the Center for Organizational Excellence). However, the complete documents were never provided. On June 11, 2014, the contracting office provided some of the contract documents, specifically the initial order for supplies and services, all task order modifications, and a Management Plan. The accompanying email indicated that contracting was unable to find any other documents for Task Order 11.2.4.

Among the limited contract documents provided to the OIG was bilateral contract modification number M002, effective July 5, 2012. This was the modification that pertained to Excella’s work for USAJOBS. The description of the modification stated, “The purpose of this modification is to add Task 11.2.4 (CLIN 00008) of the referenced project to the services being performed under this task order. Accordingly, the overall task order value and funding is increased by \$33,920.00.” Page 2 of the contract modification defined the “POP”, or period of performance, for Task 11.2.4 as July 5, 2012 through September 30, 2012.

The July 5, 2012 through September 30, 2012 period of performance listed on contract modification number M002 WAS NOT ACCURATE. As previously stated, investigation by the OIG established that the actual period of performance for Task Order 11.2.4 was May 1, 2012 to June 30, 2012. Therefore, Excella had already finished Task Order 11.2.4 for USAJOBS before

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the relevant contract modification was ever issued on contract number OPM02070039-0274. Due to the lack of documentation provided by the contracting office, the OIG is unable to assess whether the inaccurate period of performance on the modification number M002 was deliberate, or an honest mistake on the part of a contracting officer unaware that the work had already been performed for USAJOBS. However, we note that the FAR 43.102 states “(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not . . . (3) Direct or encourage the contractor to perform work that should be the subject of a contract modification”. Since Excella completed Task Order 11.2.4 before the contracting officer issued the relevant contract modification, it certainly appears that Excella was directed to perform that work by “other Government personnel.” In the OIG’s view, this constitutes an unauthorized commitment.

Ratification by a contracting officer is the normal response to an unauthorized commitment for which the Government is willing to assume responsibility. OPM’s Contracting Policy No. 1.602-3, issued February 23, 2005, titled “Ratification of Unauthorized Commitments,” states: “Only OPM personnel appointed as Contracting Officers have the authority to enter into contracts for OPM. An unauthorized commitment occurs when an OPM employee, other than a Contracting Officer, leads a vendor to conclude that an order has been placed for supplies or services, and the vendor proceeds with work and/or deliver/performance of the supplies or services.”

During the course of this investigation, the assigned OIG special agent consulted repeatedly with representatives of the contracting office, who informed the OIG that, based on their review of this matter, no unauthorized commitment occurred, no ratification was done, and no ratification was required. The OIG acknowledges that it is possible that this opinion regarding the lack of need for ratification was based on an erroneous belief that the period of performance listed on contract modification number M002 was accurate.

The OIG notes that the Task Order Description for Task 11.2.4 (provided by the EHRI Acting Director, not contracting) said it was for “short-term support.” Task Order 11.2.4 did not represent the entire scope of the anticipated work for USAJOBS; in fact, it didn’t even cover the entire period of performance (through September 29, 2012) originally intended under the prior DHS contract.

## **LONG TERM SOLUTION: OPM INFORMATION TECHNOLOGY (IT) SERVICES BLANKET PURCHASE AGREEMENT**

During the April – May 2012 time period, in addition to seeking short-term help from EHRI, the USAJOBS Project Lead was also seeking a long-term solution that would extend Excella's support to USAJOBS past July 1, 2012. The decision to divide the anticipated work between two procurements, with May/June 2012 under the existing EHRI contract (OPM02070039-0274), and the remainder of the work under a different contract, lends credence to the allegation that the USAJOBS Project Lead was seeking ways to contract the work specifically to Excella. The content of his email communications also reflected his particular interest in Excella.

Emails reviewed by the OIG revealed that, while negotiating to use the EHRI contract as a two-month temporary solution, the USAJOBS Project Lead was also exchanging emails about using a different contracting vehicle, specifically an existing OPM IT Services Blanket Purchase Agreement. There were multiple vendors, including Excella, available through OPM IT Services Blanket Purchase Agreements, which were issued in accordance with General Services Administration (GSA) Information Technology Schedule 70. The OPM IT Services Blanket Purchase Agreement with Excella was contract number OPM32-12-A-0003, and it permitted Excella to compete for orders issued under Special Technical Area (STA) 3.1.

Through email exchanges, the USAJOBS Project Lead learned that Excella was a small business, and that Excella was one of only four vendors eligible to compete for task orders issued under STA 3.1 of the OPM IT Services Blanket Purchase Agreement. Another related email, dated April 12, 2012, contained the following statement:

“For the OPM IT Services BPA, STA 3.1 is the best choice for USAJOBS support. There are only 2 or 3 other vendors on that STA. On Friday contracting indicated that while the intent was to do fair and open competition for all tasks, if there was a pressing need that the program office could justify they could sole source work. They cited the case of 'uniquely qualified resources' and 'time constraints' as valid justifications, which might be a stretch but I'm not sure there are too many other folks on 3.1 that have ~2 years of experience with USAJOBS, so you might be able to use that angle if the DHS vehicle is at risk.”

When the USAJOBS Project Lead forwarded this email to one of his staff, with the subject line “Excella Options”, he suggested using Excella's rates as the basis for estimating the annual cost of the contracted work. The subject line and content of this email suggest that USAJOBS was seeking to use the OPM IT Services Blanket Purchase Agreement not simply to replace the

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contracted services lost when DHS withdrew funding, but as a means of contracting specifically with Excella.

In an April 20, 2012 email, staff in the Office of the Chief Information officer cautioned the USAJOBS Project Lead as follows, "Contracting may have additional questions but they will handle the transaction. Be careful to not give an appearance of pre-selection in this matter by giving Excella any information not available to the other companies." The OIG finds this caution to avoid "an appearance of pre-selection" too late, considering: 1) prior email traffic reflected a search for a contract vehicle that would limit the number of vendors eligible to compete with Excella; and 2) USAJOBS was basing its cost estimates on Excella's rates.

A witness alleged that, after a sole-source contract was suggested, the USAJOBS Project Lead said he wanted to compete the work. However, the witness further alleged that, despite his stated desire for competition, the USAJOBS Project Lead included language in the solicitation that required USAJOBS experience, in order to ensure that Excella was the only qualified contractor eligible to submit a bid.

When interviewed by the OIG, the USAJOBS Project Lead acknowledged that he was pleased that Excella was awarded the work; he said he needed the use of contractors, whether Excella or another company, in order to run USAJOBS. He also claimed that he made the language in the solicitation general, and not specific to vendors who had knowledge of USAJOBS. Per the USAJOBS Project Lead, keeping the language general gave more opportunity for small businesses to submit bids, yet, in the end, only Excella submitted a bid to OPM. Thus, Excella was awarded the task order.

The OIG reviewed the May 17, 2012 Request for Proposal, Solicitation Number OPM32-12-T-0045, titled "Program Management Support for USAJOBS" and two amendments. The solicitation estimated the period of performance as a base year, plus four option years. As the witness alleged, the original version of the solicitation did contain language requiring experience with USAJOBS; in fact, it required "a minimum of 2 years experience." However, the second amendment to the solicitation revised the original language, in response to Question 11 from a potential vendor, who asked "Could OPM please confirm whether this is a competitive procurement open to all STA 3.1 BPA holders, or if, per the above mentioned requirements, competition is restricted to only those contractors with USAJOBS specific experience?" In response, OPM changed the Summary of Requirements to rephrase the references to USAJOBS, and responded, "Any 3.1 BPA holder may submit a proposal for this requirement. Competition is not restricted in any other way. See the attached changes to Section 1.4 of the RFP." Those changes softened the references to USAJOBS experience but did not eliminate them, by

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changing the requirement from USAJOBS-specific experience, to experience with programs “such as” and “most like” USAJOBS.

The OIG confirmed that Excella submitted its proposal on May 29, 2012, and that Excella was the only vendor eligible to compete under STA 3.1 to submit a bid.

According to the General Services Administration (GSA) responses to Blanket Purchase Agreement Frequently Asked Questions (See <http://www.gsa.gov/portal/content/200549>), orders placed under Blanket Purchase Agreements meet the requirements for full and open competition imposed by the Competition in Contracting Act of 1984, “when the GSA Schedule ordering procedures are followed.” Per GSA, “In general, at least three (3) sources are to receive fair consideration for orders placed under BPAs (except single-award BPAs) when the value of the order exceeds the micro-purchase threshold. If the value of the order exceeds the simplified acquisition threshold, at least three (3) quotes from Schedule contractors who could meet the requirements should be received. If these general standards have not been met, the contracting officer must document the circumstances, including an approved limited source justification if applicable or other facts that demonstrate the adequacy of the ordering agency’s attempt to meet the competitiveness standard (FAR 8.405-1(g) and FAR 8.405-2(e)).”

Although Excella was the only vendor to submit a quote in response to OPM’s Request for Proposal, Solicitation Number OPM32-12-T-0045, the contract documents provided to the OIG did not include a limited source justification for that order. Further, although OPM contracting officers, at their discretion, could have set aside the order for small businesses, there is no indication that they did so in the contract documents provided to the OIG. Since the contracting office produced no evidence of a limited source justification, or a small business set aside, it appears to the OIG that OPM inappropriately failed to encourage competition for the order. In the OIG’s view, simply stating that “competition is not restricted” in response to a potential vendor’s question about the USAJOBS experience requirement was not sufficient to ensure competition, when the amended solicitation still required experience with programs “such as” and “most like” USAJOBS, and OPM program managers had deliberately chosen to use the OPM IT Blanket Purchase Agreement as the contracting vehicle because they knew Excella was the only one of the STA 3.1. Blanket Purchase Agreement holders with USAJOBS experience.

On July 1, 2012, OPM’s Central Contracting Office in Washington, DC placed an order for services under STA 3.1 of the OPM IT Services Blanket Purchase Agreement with Excella, which established a Labor Hour Call for “Program Management Support Services for USAJOBS.” The base year’s period of performance began on July 1, 2012, with four option years. The total potential value of the award was \$7,767,350.40, with \$1,240,388.00 obligated for the base year.

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The OIG noted the overlap in performance dates between this order on the OPM IT Services Blanket Purchase Agreement (the base year beginning July 1, 2012), and the inaccurate period of performance listed on the EHRI contract modification which created Task 11.2.4 (July 5, 2012 through September 30, 2012), and also that the work performed under both contracting vehicles was performed by the same Excella employee. We also noted the irony that the contracting office completed USAJOBS's long-term solution (the July 1, 2012 order under the OPM IT Services Blanket Purchase Agreement) several days BEFORE the short-term solution (the July 5, 2012 modification which created Task 11.2.4 on the EHRI contract).

## FINDINGS

### **FINDING 1: Unauthorized Commitment, in violation of FAR 43.102 and OPM Contracting Policy No. 1.602-3**

Excella was working for USAJOBS pursuant to a DHS contract. DHS's funding for the contract expired April 30, 2012. No other contract vehicle was in place until July 5, 2015, when modification M002 added Task Order 11.2.4 to EHRI's contract (OPM02070039-0274). The period of performance listed on modification M002 (July 5, 2012 through September 30, 2012) was inaccurate. By the time contract modification M002 was issued, Task Order 11.2.4 had already been completed by Excella, with the actual period of performance between May 1, 2012 and June 30, 2012. Thus, there was an unauthorized commitment in violation of FAR 43.102 and OPM Contracting Policy No. 1.602-3.

### **FINDING 2: Task initiated prior to pricing, in violation of FAR 43.102(b)**

Excella began work on Task Order 11.2.4 on May 1, 2012, which was before the proposal was reviewed, USAJOBS determined they could not afford the quoted price, and EHRI subsequently modified the Task Order requirements. Initiation of Task Order 11.2.4 prior to pricing violated FAR 43.102(b).

### **FINDING 3: Program Manager attempted to limit competition without documenting justification for a limited or sole source procurement**

Based on our investigation, it appears to the OIG that the USAJOBS Project Leader intended from the beginning to contract specifically with Excella, because he was satisfied with Excella's past performance and valued their experience. To accomplish this goal, he sought and used two different contracting vehicles: a modification on the EHRI contract to cover the first two months

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(worth \$33,920.00), while he worked on getting a USAJOBS-specific order on the OPM IT Services Blanket Purchase Agreement (potentially worth \$7,767,350.40). It appears the OPM IT Services Blanket Purchase Agreement STA 3.1 was deliberately chosen as the contracting vehicle after the USAJOBS Project Leader first determined that Excella would be the only contractor eligible to bid which could meet a prior experience requirement. These actions limited competition without any documentation justifying a limited or sole source procurement.

## CONCLUSION

Considering that DHS abruptly withdrew funds while planned work for USAJOBS was in progress by Excella, the OIG believes it was reasonable for USAJOBS to have a strong interest in quickly obtaining an experienced contractor to continue perform the same services for the time period of the original scope on the DHS contract (i.e., through September 29, 2012). Under the circumstances, a sole-source or limited source procurement may have been justified if properly documented. Therefore, it may be tempting to discount or minimize the above referenced FAR violations associated with Task Order 11.2.4 (contract modification M002 on the EHRI contract), after considering that DHS's abrupt withdrawal of funding could have caused an unexpected work stoppage for USAJOBS, a sole-source procurement might have been justified, there was a limited scope of work (only two months), and the cost of contract modification M002 was relatively low at \$33,920.00.

However, the OIG believes it would be a mistake to minimize the FAR violations related to Task Order 11.2.4. It appears to the OIG that when the USAJOBS Project Lead needed a contract to meet USAJOBS resource requirements, he first sought help from other program managers instead of working directly with OPM contracting officers. Furthermore, it appears to the OIG that his attempts to steer work to Excella were not limited to the time period affected by the abruptly lost DHS funding (May 1, 2012 – September 29, 2012). From the beginning, Task Order 11.2.4 was intended to serve a bridge while a longer-term contract was obtained. That longer-term contract, specifically the order for "Program Management Support Services to USAJOBS" on the OPM IT Services Blanket Purchase Agreement, was for a base year plus four option years, and, if all option years were exercised, it was worth over \$7 million.

The OIG acknowledges that OPM initially satisfied competition in contracting requirements by establishing multiple-award Blanket Purchase Agreements for OPM IT Services. However, it is the OIG's opinion that OPM failed to encourage sufficient competition for the over \$7 million order placed with Excella on July 1, 2012 for "Program Management Support Services to USAJOBS". As described in this report, emails reviewed by the OIG suggest that the USAJOBS Project Lead deliberately sought to use the OPM IT Services Blanket Purchase Agreement in an

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attempt to limit the number of competitive vendors and thereby ensure Excella received the order.

The OIG finds it very troubling that this particular contracting vehicle was used, after a pre-determination that Excella was the only vendor under STA 3.1 which could meet a USAJOBS experience requirement. Subsequently, the OPM contracting office placed the order worth over \$7 million (if all option years were exercised) after receiving only one bid and without documenting justification of a limited source procurement.

The OIG is also very concerned that OPM's contracting office could not promptly furnish the OIG with relevant contract documents. It took over a year after the OIG's first request in July 2013, before contracting finished producing the limited documents they were able to provide to the OIG in September 2014.

The USAJOBS Project Lead is no longer employed by OPM. It should also be noted that, during our investigation, the OIG found no evidence of misconduct on the part of Excella.

## RECOMMENDATIONS:

1. **COMMUNICATION:** OPM should ensure good communication between the contracting office and the program office, when determining fair opportunity for potential contractors to compete.

**OPM Response:** OPM concurred with the recommendation. OPM also noted that the events described in this report occurred in 2012, and since that time OPM has "emphasized this particular area in recent guidance communicated OPM-wide." For example, in October 2014, OPM released Contracting Policy 15.201, Communications with Industry. Then, in October 2015, OPM released Contracting Policy 1.603, Contracting Officer Warrants. OPM is presently updating its Ratification of Unauthorized Commitments Policy, CP 1.602-3 and initiating a Contracting Officer's Representative Policy CP 1.602-4, and OPM anticipates releasing those policies "complete with policy briefing events offered OPM-wide before the end of fiscal year 2016." Further, OPM is also "preparing an Acquisition Policy Bulletin on FAR 3.104 Procurement Integrity." See Appendix for OPM's complete response.

2. **TRAINING:** OPM should require training for program officials and program managers who have input or involvement in the selection of contractors or contract vehicles, or who

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may be able to influence competition. In addition, OPM should consider supplementing basic Contracting Officer Technical Representative courses with basic procurement courses covering a variety of procurement topics.

**Note:** Recommendations 1 and 2 are based on “Best Practices for Multiple Award Task and Delivery Order Contracting”, issued by the Office of Management and Budget, Office of Federal Procurement Policy, updated on February 19, 1999.

(See [https://www.whitehouse.gov/omb/best\\_practices\\_multi\\_award/](https://www.whitehouse.gov/omb/best_practices_multi_award/))

**OPM Response:** OPM concurred with the recommendation. OPM also advised that on November 18, 2015, the OPM Director formally delegated responsibility for “developing and maintaining an acquisition management career program” to the OPM Senior Procurement Executive. To date in fiscal year 2016, briefings have been provided for OPM staff on the Review and Approval of Contractual Documents, the Contracting Officer Warrants Refresh process, the Program Office Source Selection process, and the Contract Review Board process.

- 3. ACCOUNTABILITY FOR COMPETITION: OPM should** bring the OIG’s findings on this matter to the attention of OPM’s Advocate(s) for Competition appointed pursuant to FAR 6.501, so that when preparing the annual report required under FAR 6.502, particular attention may be paid to FAR 6.502(2)(vii), “Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505” and to FAR 6.502(4), “Recommend to the agency senior procurement executive and chief acquisition officer a system of personal and organizational accountability for competition.”

**OPM Response:** OPM concurred with the recommendation, and advised that the OIG’s findings and recommendations regarding this matter had been reviewed by the Agency Competition Advocate and Senior Procurement Executive. OPM also noted that the agency’s competition rates exceeded “the Government-wide median for competed dollars.” Finally, OPM indicated that the Office of Procurement Operations, the Agency Competition Advocate, “and other key Program Office representatives will continue to emphasize good contracting through all phases of the process.”

# Appendix



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

March 14, 2016

MEMORANDUM FOR MICHELLE SCHMITZ  
Assistant Inspector General for Investigations  
Office of Inspector General

FROM: DENNIS D. COLEMAN DENNIS COLEMAN  
Acting Chief Management Officer  
Office of the Chief Management Officer  
Digitally signed by DENNIS COLEMAN  
Date: 2016.03.15  
06:12:59 -04'00'

THROUGH: NINA M. FERRARO NINA FERRARO  
Senior Procurement Executive  
Office of Procurement Operations  
Digitally signed by NINA FERRARO  
Date: 2016.03.14  
19:37:31 -04'00'

DEAN S. HUNTER DEAN HUNTER  
Director  
Facilities, Security, and Emergency Management  
Digitally signed by DEAN HUNTER  
Date: 2016.03.15  
12:53:12 -04'00'

SUBJECT: Notice of Intent to Issue Recommendations  
Case Number I-12-00464

Thank you for providing us the opportunity to respond to the Office of the Inspector General (OIG) notice of intent to issue recommendations for program improvements, pursuant to the investigation of improper contracting for the USAJOBS program by U.S. Office of Personnel Management (OPM) personnel, in violation of the Federal Acquisition Regulation (FAR).

Included in this memorandum are the responses and supplementary information associated with Notice of Intent to Issue Recommendations, Case Number I-12-00464, dated February 12, 2016. Responses are offered in the order with which recommendations were presented in the notice. In the event any of the responses and/or supplementary information provided herein requires further discussion and/or clarification, we will make ourselves available to you and your team.

We recognize that even the most well run programs benefit from external evaluations and we appreciate your input as we continue to enhance our program. Our responses to your recommendations are provided immediately below.

### **Recommendation 1**

Ensure good communication between the contracting office and the program office, when determining fair opportunity for potential contractors to compete.

**Management Response:** CONCUR

Ensuring that fair opportunity is considered and affirmatively recognized in accordance with Federal Acquisition Regulation (FAR) and Agency specific policies and procedures is a high priority of the Office of Procurement Operations (OPO) and the OPM Competition Advocate. Although the events detailed within this report occurred several years ago, in or around 2012, OPO has emphasized this particular area in recent guidance communicated OPM-wide.

OPM Contracting Policy 15.201, Communications with Industry, released October 2014, underlines the importance of Improper Business Practices & Personal Conflicts of Interest (FAR Part 3), Procurement Integrity (FAR Subpart 3.104), Acquisition Planning (FAR Part 7), Exchanges with industry before receipt of proposals (FAR Subpart 15.201), the Procurement Integrity Act (41 U.S.C. 2101-2107), and Standards of Ethical Conduct (5 CFR Part 2635). To supplement the above guidance OPO recently released Contracting Policy (CP) 1.603, Contracting Officer Warrants in October 2015. CP 1.603 in part emphasizes the criticality of an issued warrant and the integrity required in exercising the authority delegated through it. Additionally, OPO is at this time updating its Ratification of Unauthorized Commitments Policy, CP 1.602-3 and initiating Contracting Officer's Representative (COR) Policy CP 1.602-4. The refresh of established CP 1.602-3 and the introduction of CP 1.602-4 will create greater structure within the entire acquisition process, clearly communicating OPM-wide the sensitivity of the procurement process and the potential ramifications when established FAR and agency specific policies and procedures are not followed.

OPO anticipates releasing the referenced CP 1.602-3 refresh and CP 1.602-4 introduction, complete with policy briefing events offered OPM-wide before the end of fiscal year 2016. OPO is also collaborating at this time with the OPM Office of General Counsel (OGC) in preparing an Acquisition Policy Bulletin on FAR 3.104 Procurement Integrity. The bulletin focuses primarily on the prohibitions associated with disclosing procurement information and obtaining procurement information, both of which deeply impact fair opportunity. This bulletin shall be broadcast OPM-wide and it is also anticipated that associated policy briefing events will be offered.

**Recommendation 2**

Require training for program officials and program managers who have input or involvement in the selection of contractors or contract vehicles, or who may be able to influence competition. OPM should consider supplementing basic Contracting Officer Technical Representative courses with basic procurement courses covering a variety of procurement topics.

**Management Response:** CONCUR

The OPM Senior Procurement Executive (SPE) is responsible for developing and maintaining an acquisition management career program that ensures an adequate professional workforce. This responsibility was formally delegated by the OPM, Director to the SPE on November 18, 2015, under the authority of 41 USC 1702(c) and implemented within Federal Acquisition Regulations (FAR) Subpart 1.601. The successful execution of Acquisition Career Manager (ACM) roles and responsibilities is a primary focus of the OPO Policy and Innovation Division. The continued development, training and certification of the Federal Certification in Contracting (FAC-C), Contracting Officer's Representative (FAC-COR) and Program and Project Management (FAC-

# Appendix

P/PM) is managed by the OPO Policy and Innovation Division through the Federal Acquisition Institute Training Assistance System (FAITAS) and includes not only documenting the training directly relevant to the aforementioned certifications but also the tracking of Continuous Learning Point (CLP) requirements. CLP requirements supplement the standard certification training program and must be met every two years in order to maintain an achieved Federal Certification. The OPO Policy and Innovation Division assists OPM team members with FAITAS certification requirements which include Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) training classes and in-house provided training and briefing events.

Recently in FY16, OPO has developed and conducted briefings for OPM staff on the Review and Approval of Contractual Documents, October 15, 16, 2015, the Contracting Officer Warrants Refresh process, October 23, 2015, the Program Office Source Selection process, October 28, 2015, and the Contract Review Board process, November 4-6, 2015. Additionally, as reflected in the response to recommendation 1 above, OPO anticipates releasing CP 1.602-3 refresh and CP 1.602-4 introduction, complete with policy briefing events offered OPM-wide before the end of FY16. OPO is also collaborating at this time with OGC in preparing an Acquisition Policy Bulletin on FAR 3.104 Procurement Integrity. This bulletin shall be broadcast OPM-wide and it is also anticipated that associated policy briefing events will be offered. All of the above represent supplemental training and briefing events covering a wide variety of procurement topics.

### **Recommendation 3**

Bring the OIG's findings on this matter to the attention of OPM's Advocate(s) for Competition appointed pursuant to FAR 6.501, so that when preparing the annual report required under FAR 6.502, particular attention may be paid to FAR 6.502(2)(vii), "Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505" and to FAR 6.502(4), "Recommend to the agency senior procurement executive and chief acquisition officer a system of personal and organizational accountability for competition."

### **Management Response: CONCUR**

The subject OIG report has been reviewed by the Agency Competition Advocate and Senior Procurement Executive. OPO will continue to manage and respond on behalf of the Agency to procurement related external data calls, including those mandated by the Office of Management and Budget (OMB) and the Office of Federal Procurement Policy (OFPP). This includes not only the above mentioned FAR Subpart 6.502 requirement but also competition related data calls, for example the Agencies annual benchmarking response which includes one-bid rate and agency competition reporting.

As recently as February 2016 the SPE reported on the agency competition rate to the OPM Director. Of note, OPM's competition rates are comparable to other agencies. For example, In FY14, the Government-wide median for competed dollars was 79%, which OPM (86.49%) exceeded. Placing this information into greater context, for agencies with a similar spend (\$1B-\$2B), OPM had the highest competed dollars rate, tied with EPA, HUD (78%), DOL (76%), and SSA (72%) followed. OPO in concert with the Agency Competition Advocate and other key

# Appendix

Program Office representatives will continue to emphasize good contracting through all phases of the process which include for example, recognizing the benefits of competition (86.49% in FY14) and small business involvement (In FY14, OPM received an "A" on its Small Business Scorecard).

In conclusion, we appreciated the opportunity to respond to the draft findings and recommendations. If you have any questions regarding our response, please contact Gregory Blaszkowski at (215) 861-3112 or [Gregory.Blaszkowski@opm.gov](mailto:Gregory.Blaszkowski@opm.gov).



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