



Testimony of

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U.S. Department of Commerce
Office of Inspector General

before a hearing of the

Committee on Science, Space, and Technology
U.S. House of Representatives

***Investigating Contract Misconduct
at the National Weather Service***

July 15, 2015

Chairman Smith, Ranking Member Johnson, and Members of the Committee:

We appreciate the opportunity to testify today about post-employment consulting practices at the National Oceanic and Atmospheric Administration's (NOAA's) National Weather Service (NWS).

Last month, the Department of Commerce Office of Inspector General (OIG) issued a report detailing our investigation into allegations of impropriety involving a senior official at NWS who became a consultant to the agency immediately upon his retirement from federal service.¹ Based on evidence obtained over the course of the investigation, OIG identified a number of problems related to the retention of this senior official as a consultant that indicated several agency officials lacked an understanding of key government contracting and ethics regulations.

As for the actions of the senior official himself, OIG concluded that he was personally and substantially involved in the procurement of his own post-retirement consulting services. This involvement implicated numerous federal laws and regulations, including the criminal conflict-of-interest statute found in Title 18 of the U.S. Code (U.S.C.) § 208. Specifically, evidence obtained over the course of our investigation established that this senior official—while still holding his position as a federal employee—engaged in

- drafting and editing the applicable statement of work for his post-retirement consulting position,
- participating with NWS officials in setting what labor category and rates would be used to pay for his consulting services, and
- signing the task management plan that created the consulting position he would take upon his retirement on behalf of the contractor that would employ him.

Additionally, evidence established that this senior official took inappropriate steps to arrange for NWS to pay approximately \$50,000 worth of his post-retirement housing expenses. In particular, while still holding his government position, the official instructed his direct subordinate to facilitate his post-retirement use of a National Marine Fisheries Service housing contract intended to accommodate high-ranking government employees on temporary assignments to NOAA headquarters in Silver Spring, Maryland.

Evidence obtained by OIG also established that, after he became a contractor himself, the subject of our investigation contacted several NWS officials in an attempt to secure another contract position at the agency for one of his immediate family members. Although the senior official denied acting inappropriately in seeking employment for his family member, we found evidence—including his own e-mails, other contemporaneous documents, and consistent and credible testimony from other witnesses—that contradicted the official's version of events. Indeed, evidence indicated that this senior official may have offered to influence NWS officials to promote one particular agency employee if the employee could find a position for the senior official's family member. In our report, we concluded that the senior official's actions in

¹ DOC OIG, June 3, 2015. *Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official*, Report No. 12-0447. Washington, DC: DOC OIG.

attempting to influence the NWS staff were improper, and some of those actions may have implicated 18 U.S.C. § 201, the criminal statute prohibiting bribery of public officials.

As a result of our investigation and initial briefings with NOAA's senior leadership regarding the evidence, NOAA took immediate action to stop work on the senior official's task order in early 2012. In total, this senior official's post-retirement work as a consultant cost the government \$471,875.34. Because of our conclusion that certain of the official's actions may have violated federal criminal law, OIG referred this matter for prosecution; however, the relevant prosecutors declined to pursue charges.

While OIG's inquiry was focused on the activities of the senior official specifically named in the complaints that prompted our investigation, we nonetheless concluded that several government officials beyond the subject of our investigation share responsibility for the events we investigated. In particular, evidence indicated that (1) the subject acted at the direction, and with the approval, of his supervisor at all times and (2) the subject's consulting arrangement was facilitated and approved by other officials with responsibility for ensuring integrity in government contracting.

Further, evidence from witness testimony during our investigation indicates that hiring former employees as consultants to do work similar to what they performed prior to retirement may well be a common practice. For example, a high-ranking official at NWS wondered aloud "why we have all these people that retire and then we go and hire them to come back."² Similarly, a representative of NOAA's Acquisition and Grants Office—which is responsible for approving NWS contractor positions—suggested that federal employees returning as contractors once they retire "happens all the time."³ Likewise, one NWS employee who helped the subject of our investigation become a contractor told OIG that he had no concerns about what happened because he had heard of other NWS employees becoming consultants immediately after their retirement from federal service; he viewed such a career transition as a great way for former government employees to make money from their institutional knowledge of an agency.⁴ Similarly, the NWS supervisor who urged the creation of and approved the consulting position at issue told our investigators that he did not see any problems with the arrangement because he "sort of got the sense that this is just the way business is done" at the agency.⁵

Comments such as these indicate that there may exist a "revolving-door" practice at NWS that created an environment in which the problems identified in this case could occur. This is a concern for several reasons.

First, depending upon the nature of the job duties involved, hiring former agency officials as consultants may run afoul of federal law requiring the government to perform its functions through permanently employed civil service personnel. As explained in the Code of Federal Regulations, which proscribes how the government may retain and employ contract laborers: "The Government is normally required to obtain its employees by direct hire under

² See *id.* at 15.

³ See *id.*

⁴ See *id.*

⁵ See *id.* at 6.

competitive appointment or other procedures required by the civil service laws[;] [o]btaining [employee] services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.”⁶

Second, if a former-employee contractor is compensated with pay and benefits at least comparable to what he or she received prior to retiring from federal service, the use of such contractors would invariably result in an increased cost to the government—which must also pay overhead expenses to the company that employs the contractor that it retains. And when the contractor is performing job duties similar to those he or she carried out prior to retiring from federal service, as in the case of our NWS investigation, payment of these additional overhead expenses may not be a good use of tax-payer dollars.

Third, the hiring of former federal employees as government contractors may increase the likelihood that conflicts of interest and other ethical issues will arise. Indeed, even if carried out in a completely lawful and transparent manner, such a practice—if thought to be routine—presents an appearance of impropriety capable of eroding public confidence in the integrity of government.

With this in mind, OIG is now taking steps to assess whether a revolving-door practice truly exists at NWS. For example, on June 11, 2015, we initiated an audit of NWS regarding its award and administration of procurement actions that support its workforce. The overall objective of this audit is to evaluate whether NWS has adequate controls in place to ensure compliance with applicable laws and regulations for personnel support acquired through service contracts. As part of this audit process, we will assess how many former employees NWS may have hired on as contractors within the last several years. Through our investigative and audit efforts, we will examine (a) how often such hirings occur; (b) whether they comply with relevant contracting and ethics regulations; and (c) whether there are any programs, offices, and areas that may warrant closer scrutiny.

In closing, we ask the Committee to note that, in issuing its report on this matter, OIG has intentionally refrained from naming the officials involved in our investigation. Nothing in the OIG’s written or verbal testimony is intended to circumvent recognized privacy protections afforded by the Privacy Act or any other federal statute.

I want to thank the Committee for the opportunity to testify today, and I look forward to your questions.

⁶ 48 C.F.R. § 37.104(a).

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Mark L. Greenblatt serves as the Deputy Assistant Inspector General for Compliance and Ethics for the Department of Commerce Office of Inspector General (OIG). He previously served as the Director of Special Investigations for the Department of Commerce OIG and as an Investigative Counsel in the special investigations division of the Department of Justice OIG.

Prior to his service in the executive branch, Mr. Greenblatt worked for the U.S. Senate Permanent Subcommittee on Investigations as an Investigative Counsel, Deputy Chief Counsel, and later Minority Staff Director and Chief Counsel. During his tenure with the Senate subcommittee, Mr. Greenblatt led several high-profile cases, including investigations into the United Nations Oil-for-Food Program, homeland security vulnerabilities, and Medicare abuses. Mr. Greenblatt also worked at private practice as a litigation associate at both Akin Gump and Simpson Thacher & Bartlett in New York, NY, and served as a law clerk for Federal District Judge Anita B. Brody in the Eastern District of Pennsylvania.

Mr. Greenblatt received his JD from Columbia University School of Law and his undergraduate degree from Duke University. Mr. Greenblatt was also a Senior Manager in Government Fellow at Harvard University's Kennedy School of Government and received a certificate from the Experienced Leaders Program of Council of the Inspectors General on Integrity and Efficiency. Apart from his government service, Mr. Greenblatt also serves as the Vice-Chair of the Montgomery County (MD) Ethics Commission.