Department of Veterans Affairs
Office of Inspector General

Administrative Investigation
Improper Contracts, Conflict of Interest, Failure to Follow Policy, and Lack of Candor, Health Administration Center, Denver, Colorado

Redacted

Report No. 10-02328-154

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VA Office of Inspector General
Washington, DC 20420

DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: Principal Deputy Under Secretary for Health

SUBJECT: Administrative Investigation, Improper Contracts, Conflict of Interest, Failure to Follow Policy, and Lack of Candor, Health Administration Center, Denver, Colorado (2010-02328-IQ-0198)

Summary

We substantiated that Ms. Patricia Gheen, Deputy Chief Business Officer for Purchased Care, Veterans Health Administration (VHA), Health Administration Center (HAC), engaged in improper contracting activities when she instructed her subordinates to issue sole-source task orders to one specific contractor and in a conflict of interest when she failed to maintain an arm's-length relationship with two VA contractors. Further, we found that Ms. Gheen violated VA policy when she sent VA contract proprietary information to her personal home computer and when she emailed a VA Office of Inspector General (OIG) draft audit report to one of these contractors about 1 month prior to her program office awarding them a task order that was consistent with the OIG audit report. We also found that Ms. Gheen did not testify freely and honestly concerning her relationship to contractors and her involvement in the decision to award and administer these task orders.

We also found that Mr. [redacted] did not comply with Federal Acquisition (7)(c) Regulations (FAR) pertaining to orders placed against Federal Supply Schedule (FSS) contracts. We recognize that Ms. Gheen may have pressured him to make awards to a specific contractor; however, we found that he lacked a comprehensive understanding of acquisition requirements and was not familiar with the rules and regulations applicable to ordering from FSS contracts. Additionally, we found no evidence that he documented or raised any concerns within his chain of command to ensure compliance with laws and regulations as required by his warrant.

Introduction

The OIG Administrative Investigations Division investigated allegations that Ms. Gheen engaged in improper procurement activities, a conflict of interest and misused her position for personal gain. In addition, we investigated whether Ms. Gheen violated VA policy and did not testify freely and honestly concerning her involvement with contracting and contractor employees. To assess these allegations, we interviewed Ms. Gheen, and VA and non-VA employees. We also reviewed email, personnel, and contract records, as well as applicable Federal laws, regulations, and VA policy. Further, we reviewed the eight task orders in hard copy or in the electronic Contract Management System (eCMS) that were awarded between May 2008 and January 2010 to a specific contractor, and we requested additional information from the Contracting Officer (CO) when we found incomplete files.

Background

Personnel records reflected that Ms. Gheen began her VA career in December 1975 and that she worked in a variety of positions. Records also reflected that she was appointed to the Senior Executive Service in December 2007 when she became the VHA Deputy Chief Business Officer (DCBO) for Purchased Care. Organizational records reflected that the DCBO for Purchased Care was aligned to the VHA Chief Business Office (VHA CBO) under the Deputy Under Secretary for Health for Operations and Management and that the DCBO for Purchased Care assisted in the direction, oversight, and management of the initiatives, programs, projects, and other activities associated with purchased care programs and initiatives, which included the HAC and the piloted Project Healthcare Effectiveness through Resource Optimization (HERO). Records further reflected that the HAC's primary mission was to administer Federal health benefit programs for veterans and their families, providing fiscal services and contracting, information systems, and human resources (HR) management support. The DCBO for Purchased Care was one of the three principal advisors to the Chief Business Officer (CBO) and acted on his behalf with equivalent authority for all issues related to VHA CBO Purchased Care activities.

Mr. Charles DeCoste, former (retired) VHA DCBO, told us that he spent 34 years working for VA and that he retired in March 2007. Mr. DeCoste said that he first worked with Ms. Gheen in the mid-1980s when she was an administrative intern in Boston, MA. Ms. Gheen told us that Mr. DeCoste was, at that time, a preceptor for her while she was in the training program. Personnel records reflected that Mr. DeCoste was Ms. Gheen's immediate supervisor at the Boston VA Medical Center in 1987. Mr. DeCoste told us that he also worked with Ms. Gheen on "a couple of projects" over the years. Personnel records reflected that Mr. DeCoste rated Ms. Gheen "[redacted]" for the 2006 performance rating period and authorized her November 2006 reassignment to Washington, DC. (7)(c)

Mr. DeCoste told us that he began working for Corrigo Healthcare Solutions (CHS) in May 2007. The CHS website reflected that Mr. DeCoste was a Senior Vice President and served as the CHS Senior Executive for Business Development and Operations. It also reflected that Mr. DeCoste "most recently served as the Department of Veterans Affairs Deputy Chief Business Officer." Federal law required Mr. DeCoste to have a 1-year "cooling off" period before he could become involved in any business-related activities between CHS and VA. A year after his retirement, in March 2008, Mr. DeCoste told the then CBO, in an email, that he wanted to "reconnect both personally and professionally," and the CBO copied Ms. Gheen on his positive response email to Mr. DeCoste.

Mr. Robert Perreault, former (retired) VHA CBO, told us that he spent 32 years working for VA and that he retired in January 2004. He said that he met Ms. Gheen when she worked in Boston and that he has known her for about 25 years. Mr. Perreault said that since January 2007, he was self employed as the Principal for Channel Marker, LLC (CM). He told us that for 2 to 3 years, CM had a consulting arrangement with CHS to advise them on business opportunities and business development activities. The CHS website reflected that Mr. Perreault was a CHS Senior Consultant and VHA's first CBO.

Results

Issue 1: Whether Ms. Gheen was Improperly Involved in Eight Procurements and Whether the Procurements Complied with Applicable Laws and Regulations

Federal law states that, except in identified cases, an executive agency in conducting procurements for property or services shall obtain full and open competition through the use of competitive procedures and shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement. 41 USC § 253(a)(1)(A) and (B). Federal acquisition regulations state that no contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. 48 CFR § 1.602-1(b). Regulations also state that contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. Id., at 1.602-2.

The Federal Procurement Data System (FPDS) reflected all task orders awarded by VA to CHS and that prior to FY 2008, FPDS reflected that VA awarded only two contracts to CHS valued at $99,000 in FY 2003 and $80,000 in FY 2002. (FPDS reflected that the HAC program office did not award these task orders to CHS.) We found that between May 2008 and January 2010, CHS received 11 awards, 8 of which were issued by the HAC program office. The aggregate value of these contracts was about $2.9 million, which included post-award modifications increasing the value. FPDS records reflected

that the HAC awarded their first task order to CHS, valued at $765,000, about 2 months after Mr. DeCoste sent an email to the former CBO wanting to "reconnect both personally and professionally." We found that in just over 3 months, May 29 to September 9, 2008, the HAC awarded a total of three task orders to CHS and that most of these task orders were for a short base year through FY 2008 with an option year through FY 2009. In our assessment of these task orders, we questioned whether there was a legitimate need for the services provided by CHS or whether Ms. Gheen wanted to ensure that CHS gained sufficient knowledge and expertise to prevail in larger competitive procurements in the future. Although the procurement records appeared that the task orders were properly competed, the manner in which they were processed limited competition to CHS.

FPDS records reflected that near the time that the initial three task orders expired in late FY 2009, the HAC program office awarded five new task orders to CHS between August 26, 2009 and January 26, 2010, valued at $543,691, bringing the total amount awarded to CHS in less than 2 years to $2,852,427. We found that the initial three task orders were improper Service-Disabled Veteran-Owned Small Business (SDVOSB) set-asides, four of the remaining five were sole-source awards, and that the manner in which the fifth task order was awarded significantly limited competition, thus ensuring that CHS received it. (VA's website www.vetbiz.gov, maintained by the Center for Veterans Enterprise, identified CHS as an SDVOSB.) Below is a list of the task orders:

Task Order	Initial Award	Type of Award	Competed
C82003	$765,000	FSS, SDVOSB Set-aside	No
C82008	$493,000	FSS, SDVOSB Set-aside	Yes
C82012	$443,887	FSS, SDVOSB Set-aside	No
C92026	$ 58,482	FSS, Sole-source	No
C92031	$ 98,615	FSS, Sole-source	No
C92033	$288,927	FSS	Yes
C02003	$ 15,082	FSS, Sole-source	No
C02010	$130,596	FSS, Sole-source	No

Ms. Gheen's Involvement in Procurement Actions

Ms. Gheen told us that she was not involved in the procurement process; however, contrary to her assertions, we found that she was very involved. Records and testimony reflected that she was responsible for making decisions to purchase services rather than perform the work in-house, writing the Statements of Work (SOW), justifying sole-source task orders to CHS, and administering the task orders.

Mr. [redacted] and Contracting Officer's Technical Representative (COTR) (7)(c)

for CBO, told us that Ms. Gheen was involved with her contracts and that she always attended the final out briefings. He also said that Ms. Gheen did not directly tell him to award contracts to CHS; however, he said that two employees that worked for Ms. Gheen advocated that as her position. He said that one of the employees once said that Ms. Gheen "ordered him" to award a contract to CHS. That employee told us that he understood the rationale of Ms. Gheen's decision, due to time constraints, and that he was comfortable conveying those instructions. The other employee told us that employees felt uncomfortable with the nature of Ms. Gheen's past and perceived personal (7)(c) relationship with Mr. DeCoste and how it reflected on the end result. Mr. [redacted] further said that on one occasion, Ms. Gheen gave a positive evaluation of past performance for a CHS contract and that her evaluation was given to the members of the Technical Evaluation Board. The Past Performance Questionnaire for the "CBO FSC Mill Bill Claims Audit Services," signed by Ms. Gheen on March 13, 2010, reflected that she rated CHS "excellent" in all areas, stating that they had "knowledgeable staff; extensive commercial market expertise." (CHS's website listed medical schools, physician groups, and health care systems as clients.) This evaluation impacted scores during the technical evaluation of proposals.

Mr. [redacted] told us that Ms. Gheen had total impact and oversight of everything that came (7)(c) out of Purchased Care. He said that Ms. Gheen and her program office put their ideas on paper, and Mr. [redacted], forwarded them to Mr. [redacted] office to be put into a contract. He further said that, as a result, there were two or three different sole-source contracts awarded to CHS. Mr. [redacted] told us that the justifications for these contracts reflected that CHS had the knowledge and were the only contractor with the technical experience to perform the task. He said that Mr. [redacted] or Mr. [redacted] wrote the sole-source requirements. Mr. [redacted] told us that the sole-source contracts were the CO's reaction to get things quickly done, due to a very short suspense. He said that when CHS competed for contracts, they typically did not get them. Mr. [redacted] told us that CHS did not win VA contracts when they competed for them, because when VA did a labor hour analysis, CHS was "pretty blatant" in being "top heavy" in the "labor category."

Mr. [redacted] (formerly an [redacted] and subordinate to Ms. Gheen), told us that contracts were awarded to CHS as sole-source, based on a justification that CHS understood VA and VA's purchased care process. He said that CHS had institutional knowledge, and he said that they understood the needs and how the system worked. He also said that it was less expensive to contract with CHS, because he said that other contractors might need to learn how VA did business. However, Mr. [redacted] told us that 2 to 3 years ago, Ms. Gheen instructed him to write sole-source contracts and justification letters to award contracts to CHS and that after a couple of these contracts, he spoke to Mr. [redacted], his former Director and currently self-employed, due to a concern that these contracts were "contracting infringements." Mr. [redacted] said that shortly after speaking to Mr. [redacted] and confronting

Ms. Gheen about the contracts, he was removed from his Project Manager position and his staff removed from his supervision.

Mr. [redacted] told us that CHS had certain insights above and beyond other contractors and (7)(c)
that when he first joined VA, many of the SOWs contained paragraphs that stated the contractor was to have a full and in-depth knowledge of VA. He said that he told his supervisor, Ms. [redacted] "many times" to either take out the paragraphs or provide justification for them. He also said that when he arrived at VA, his mantra was to do a lot of full and open competition, even if they did not think they would get responses to the RFQs. He said that when he started working at VA his philosophy was to use the best commercial practices and look outside the normal group of contractors working for VA to get new ideas. Mr. [redacted] told us that he left VA, because he found that he "was getting so caught in the VA culture…I was losing touch with what's really industry best practices out there in the commercial world."

Ms. [redacted] told us that a year ago, there was an appearance issue brought to her attention regarding CHS contracts. She said that Mr. [redacted] expressed a concern about the sole-sourced contracts with CHS. She said that she told Mr. [redacted] that since a legal CO signed the sole-source justification, there was no wrongdoing. Mr. [redacted] told us that on several occasions, he argued with Mr. [redacted] about awarding so many sole-source contracts in a row and to the same vendor, CHS. Mr. [redacted] said that although sole-source was used due to time constraints, it was not a justifiable reason. He also said that it was typical of VHA CBO operations to wait until the last minute and then not have time to go through the competitive process for contracts. He said that he wrote the sole-source justifications and either Mr. [redacted] or Mr. [redacted] signed them.

Mr. [redacted] told us that CHS had an advantage because they knew VHA CBO policy (7)(c)
inside and out, which allowed them an advantage over another contractor without that same knowledge. However, he said that he thought the language in the solicitations was written improperly tight so that when held against other contractors' qualifications, CHS stood out. Mr. [redacted] further said that the justifications were technically correct but that they were not "keeping in the spirit of the law." He said that he questioned some of the bids submitted by CHS, because he said that CHS came in right at the estimated cost, which he thought was suspicious. Further, he said that when he spoke to CHS employees, they already had a lot of information on the actual requirements and the SOW, prior to being issued. Mr. [redacted] told us that he did not know if CHS gained this information through market research, but he said that he believed that someone at VA previously spoke to them at length about it.

Mr. [redacted] told us that he grew suspicious of the CHS contracts when he found that the SOWs were written at a level that required so much knowledge of VA's structure. He said that in some instances, it was required, due to professional services that impacted VA; however, he said that several of the contracts and SOWs were written in such a

manner as to specifically exclude competition. Mr. [redacted] said that through hearsay, he learned that Ms. Gheen and Mr. DeCoste were in constant communication and contact and that there were rumors that Mr. DeCoste and Ms. Gheen discussed contract requirements. He said that Mr. DeCoste would therefore know the requirements and the target budget for the contract in advance. Mr. [redacted] also said that he told his staff that, if CHS appeared on the solicitations or proposals, he (Mr. [redacted]) wanted to personally look at it to ensure everything was 100 percent correct. He said that he also instructed his contracting staff to follow VHA procurement policies and regulations and pursue competitive acquisitions when possible. Notwithstanding his testimony, Mr. [redacted] did not provide us with any evidence to support his efforts to ensure that the procurements complied with applicable laws and regulations. Further, his responses to questions regarding the award of specific task orders demonstrated that he was not familiar with regulations for ordering services from FSS contracts. (7)(c)

Mr. [redacted] told us that he knew Mr. DeCoste helped establish many of the entities within VHA CBO as Mr. DeCoste previously worked there. However, he said that the recent requirements that came out of the VHA CBO or Purchased Care were new requirements and that Mr. DeCoste had no direct experience with those while a VA employee. He also said that other than rumors, he had no direct knowledge that Mr. DeCoste had any personal involvement with the contracting process.

Mr. DeCoste told us that he had a "very significant and detailed understanding of VA" and that "several other members of our Corrigo team have done work in VA over the past" few years. He said that "when we get engaged by VA to do work…we walk in with a very, I think, a very comprehensive understanding of the business environment of the eligibility requirements and those sorts of things." Mr. Perreault told us that he thought the justification for sole-source contracts to CHS would be based on CHS's experience, qualifications, and past performance. Federal regulations state that absent credible evidence that the services required could only be obtained from a single source, experience, qualifications, and past performance are not justifications for limiting competition. 48 CFR § 8.405-6.

Mr. DeCoste told us that he did not think that Ms. Gheen was personally involved with VA contracts awarded to CHS. He said that CHS dealt with VA's contracting office, until VA awarded the contract, and then as appropriate, CHS interacted with the CBO. Mr. DeCoste and Mr. Perreault both told us that they did not think that Ms. Gheen gave CHS an unfair advantage over any other contractor and that she never, to their knowledge, directed or advocated for a VA official to award a contract to CHS. However, Mr. DeCoste's statements were inconsistent with documentation we found during the investigation, to include frequent email exchanges between Ms. Gheen and CHS personnel during the performance periods for the task orders with Mr. DeCoste being included on the emails. Further, email records reflected that Ms. Gheen copied Mr. DeCoste on her email communications with Mr. Perreault.

Contract records related to C82003, including emails, reflected that Ms. Gheen was involved in the day-to-day administration of the contract. For example, Ms. Gheen accepted and approved deliverables, invoices, and communicated directly with the contractor on all contract matters. Although Ms. Gheen was not the appointed COTR, she was the primary contact for communications with CHS.

We found that Ms. Gheen was intricately involved in the administration of C82012. Contract records reflected that she directly requested to modify the contract to add additional work. In a November 18, 2008, email, Ms. Gheen asked the CO to modify the contract to add work that was "very similar in scope" to the work already being performed or to just expand the number of hours for items that were already in the contract and that she had already drafted a document for the COTR and CO. The email reflected that Ms. Gheen was aware that the scope of the work may have required a new contract, but she stressed that she was short on time. Records reflected that Ms. Gheen, not the COTR, approved deliverables and invoices that CHS sent directly to Ms. Gheen.

Further, in an undated handwritten note related to a list of tasks and deliverables submitted by CHS, one of the appointed COTRs identified concerns relating to the administration of C82012. These included: (1) the tasks do not correlate to the contracted tasks' descriptions; (2) the vendor only takes directions from and communicates with Ms. Gheen; (3) the list of deliverables submitted by CHS references items that were not part of the contract; and (4) that it seems like a personal services contract for Ms. Gheen. With respect to the last concern, the COTR identified for us these items on CHS's submission, and they all referenced "assisting the DCBO/PC in …." Another notation stated that specific deliverables included in reports from CHS were not included in the SOWs. The COTR told us that the line items added to the contract via Modification 3 were not delivered in their entirety, yet the COTR said that Ms. Gheen required the COTR to pay the invoices submitted by CHS.

In another example, documentation relating to task order C02031, Fee Regulation Assessment, reflected that Ms. Gheen made the decision to sole-source the order to CHS and that she had discussions with CHS personnel and Mr. Perreault before issuing the Request for Quotation (RFQ).

Procurements Did Not Comply with Applicable Laws, Regulations and Policies

Records for the task orders reflected non-compliance with applicable laws, regulations, and policies and Ms. Gheen's direct involvement in these procurements. In addition to finding that the sole-source task orders to them did not comply with the applicable laws and regulations requiring competition. We found that for procurements not identified as sole-source, the CO inappropriately set aside the procurements for an SDVOSB; failed to send RFQs to at least three vendors who offered the services required; issued the RFQ's with very short response times; and failed to conduct any price evaluation as required by

Federal regulations. We found that these actions limited competition to the point of guaranteeing an award to CHS. As the CO, Mr. [redacted] was responsible for compliance with these requirements and that it was a condition of his CO warrant. We also found no (7)(c) evidence that he attempted to comply with the requirements or that he raised concerns within his chain of command that he could not comply because of pressure from Ms. Gheen or the program office.

Records further reflected that the task orders given to CHS were awarded against its U. S. General Services Administration (GSA) FSS contract. Federal regulations establish policies, including competition requirements, for purchasing from FSS contracts. For orders exceeding the micro-purchase threshold of $3,000, the ordering activity is required to prepare a SOW and provide an RFQ to at least three schedule contractors that offer services that will meet the agency's needs. 48 CFR § 8.405-2. We found that Mr. [redacted] attempted to compete only two of the eight orders, C82008 and C92033, and in a review of procurement files and Mr. [redacted]'s responses to specific questions, we found that the procurements did not comply with competition requirements. Federal regulations further state that if competition is to be limited, the ordering activity must prepare a written Justification and Approval (J&A). 48 CFR § 8.405-6. In the six task orders for which there was no attempt at competition, we found that three of the J&As were either incomplete, inaccurate, and/or did not justify limiting competition.

Mr. [redacted] and Mr. [redacted] told us that CHS could not win contracts through a competitive process, due to their costs being too high, so language was narrowed so that CHS was the only vendor that met the qualifications. Our review of records associated with the task orders confirmed their testimony. In addition, we found that the SOWs for all contracts to be very general in nature and included non-essential requirements that would make it difficult for a vendor to prepare a technically acceptable and reasonably priced proposal. We further found that the time period between the issuance date of each RFQ and the due date for quotations were too short to encourage competition. We found that three of the task orders were inappropriate SDVOSB set-asides, because at that time, Federal regulations did not permit set-asides when ordering from the FSS. 48 CFR § 8.405-5. We also found that Mr. [redacted] failed to include FAR clause 52.219-4, Limitations on Subcontracting, or similar language, in the task orders as required.

We identified the following issues associated with task orders awarded to CHS:

C82003 – Analysis, Assessment, and Risk Mitigation Services: Even though an SDVOSB set-aside against the FSS was inappropriate, there was no documentation in the contract file showing market research was completed to determine whether there were two or more SDVOSBs capable of performing the work to justify the set-aside. Set-asides were only required when there were two or more vendors that could provide the services. Public Law 109-461. Records reflected that the SOW was also very general in nature with respect to the work to be done and the deliverables. Although the RFQ stated

that the purpose of the solicitation was "Analysis, Assessment and Risk Mitigation for Hero Project," there was no detailed description of the project that a vendor with no experience with VA's programs could use to prepare an offer for a firm-fixed-price contract. Further, there were no documents showing how the solicitation was issued or that it was issued in a manner to allow for competition even among SDVOSBs. CHS's offer was $771,771, but there were no documents showing the expected labor categories or estimated hours and hourly rates for each to support the total expected value.

C82008 – Risk Management and Support Services – Project Hero: Records reflected that the SOW was too general in nature and did not provide the specificity needed to submit a comprehensive firm-fixed-price proposal. They also reflected that the procurement was open to GSA FSS vendors only; was a SDVOSB set-aside; and VA would only accept offers from SDVOSBs. Mr. [redacted] told us that Public Law 109-461, the Veterans First Act, and VA Information Letter (IL) 049-07-07-08 implementing the law was the authority allowing an SDVOSB set-aside for this and other procurements. Contrary to his assertion, the law and IL did not apply to FSS purchases or that FSS regulations did not allow SDVOSB set-asides. Records also reflected that Mr. [redacted] sent the RFQ to 11 vendors on GSA's MOBIS schedule (Other Professional Services Management, Organization and Business Improvement Services) that qualified as SDVOSBs. We found no records reflecting how he selected the vendors or whether the vendors offered the services needed to perform the tasks. CHS was not one of the vendors; however, records reflected that they asked Mr. [redacted] for the RFQ. (7)(c)

We contacted the 11 vendors and 6 responded. They told us that the 2-week response period was too short; they believed VA already selected a vendor; they were just being used to meet the "three bid" requirement; and, they restricted proposals to their main business lines. One vendor said that his main business lines were manpower, personnel, compensation, benefits, bonuses and custom software. Another said that their work focused on environmental public health and that they limited their work to their core customers, which did not include VA.

Records reflected that CHS's offer of $493,000 (without travel) was higher than the Independent Government Cost Estimate (IGCE) of $458,000 (without travel); however, other than being lower than the offer submitted by another vendor, there was no evidence to show that Mr. [redacted] determined that the total price, considering level of effort and mix of labor to perform the task, was reasonable as required under 48 CFR § 8.405-2(d) "Ordering procedures for services requiring a statement of work." The competing vendor provided a pricing proposal that included GSA labor categories, hourly rates, and estimated hours by task for each labor category proposed. In contrast, CHS's proposal only included a firm-fixed-price for each task; it did not include labor categories, hourly rates, or an estimated number of hours for each labor category. Therefore, Mr. [redacted] had no means to evaluate the reasonableness of CHS's offer and did not ask for additional information to perform the required price evaluation.

Records reflected that the contract was to expire on September 30, 2009, but it was modified to add additional work at a cost of $99,000 through December 30, 2009. Records lacked adequate justification for the additional work or documents showing that (7)(c) Mr. [redacted] made a price reasonableness determination as required by 48 CFR § 8.405-2(d) and (e). As with the initial order, the modification that increased the value of the order was based on a firm-fixed-price quotation with no breakdown of labor categories, hourly rates, or estimated hours per task.

C82012 – Non-VA Dialysis Services: Records reflected that the RFQ for this procurement was issued on July 28, 2008, with a response date of August 13, 2008, and that work under the task order was to commence on September 1, 2008. This was a SDVOSB set-aside for FSS contract holders. Although procurement files reflected that the RFQ was sent to three vendors, including CHS, our review of the services offered by the other two vendors did not provide the type of services required. One provided administrative and professional support services to agencies for back-up and recovery operations and the other provided services relating to engineering and IT innovations. In addition to the fact that Mr. [redacted] did not send the RFQ to three vendors who could meet the agency's needs, the short time period to respond to the RFQ and the short time period to begin work effectively eliminated competition. Further, within weeks of the award, the time period to perform was extended 30 days, and less than 2 months later, the task order was modified to add "follow-on" services and extend the term of the contract through June 30, 2009.

In a November 18, 2008, email, Ms. Gheen asked Mr. [redacted] to modify the contract to (7)(c) add work that was "very similar in scope" to the work already being performed or just expand the number of hours for items that were already in the contract. She said that she already drafted a document for the COTR and CO and that she was aware that the scope of the work may have required a new contract but stressed that she was short on time. Mr. [redacted] determined that the work was within scope of the existing contract and issued Modification No. 3 extending the term of the contract to June 30, 2009, to add follow-on work and increased funding by $497,500, which more than doubled the value of the contract. A handwritten note in the contract file stated: "Justification for new work on CHS contract Jan 09→June 30, 09 prepared by CHS. Approved by Patty Gheen."

Records reflected that the work added to the contract did not meet the criteria for follow-on work as delineated in 48 CFR § 6.302-1 or the fair opportunity provisions in 48 CFR § 16.505, and other than stating that the work was follow-on, there was no justification in the contract file to explain the rationale for this determination. Additionally, the file did not include an IGCE for the new work or any documents showing that Mr. [redacted] determined the total price offered by CHS was reasonable as required by 48 CFR § 8.405-2. Records reflected that CHS prepared the figures and Mr. [redacted] accepted what they submitted. The modification was, in effect, another sole-source award to CHS.

Records also reflected that the award was for a firm-fixed-price contract at $443,867.54. The file contained an IGCE, but the document reflected that it was for "regulation rule writing," not non-VA dialysis services. Mr. [redacted] told us that this was a "cut and paste" and that he did not change the title of the document. The estimated value in the IGCE was $460,000 with 2,500 hours of labor to be provided by a Project Manager (500 hours) and a Senior Expert/Senior Consultant (2,000 hours) over a 12-month period of time. (7)(c) Although CHS's proposal was close to the estimate, the work was to be performed over 4 months, not 12 as indicated in the IGCE. In contrast, CHS's proposal stated that the work would be performed by four individuals – Managing Principal, Principal, Project Director, and Project Manager who would provide 1,900 hours of labor. Records did not include any documents showing that an evaluation of the estimated hours, proposed labor categories, or labor rates in the proposal with those in the IGCE was conducted.

C92026 – Mill Bill Claims Audit Services: The J&A for this sole-source procurement reflected that Mr. [redacted] determined the anticipated costs would be fair and reasonable based on a comparison of pricing with the prime contractor, discussions with the Central Office COTR, and local review by the CBO's Non-VA Purchased Care Programs Office. However, there were no documents in the eCMS file to support this. The IGCE was titled "Business Process Redesign, Process Modeling and Requirements Development Services," which was not consistent with the services SOW and title given the procurement. Further, the IGCE was undated and the preparer was not identified. The IGCE identified the period of performance as 31 days and a requirement of 3.0 FTE Business Analyst/Project Analyst at $300 per hour for 160 hours for $48,000. There were no documents showing why the labor category was for a Business Analyst/Project Analyst and not for an auditor, since the requirement was to perform an audit and provide an assessment. Further, labor hour rates of $300 per hour to perform the requirements identified in the SOW were extremely high as compared to auditor labor hour rates. The eCMS records also did not include a cost or technical proposal from the vendor. It appeared that Mr. [redacted] just issued a task order for services by unknown and possibly unqualified contractor personnel at whatever price CHS quoted, even though the $58,000 cost was 18 percent higher than the IGCE.

Records reflected that the requirement was for an "adequate" audit of material weakness purposes of the "Mill Bill" claims. The contractor was to (1) audit claims and pricing methods at VA facilities and other locations where VA had agreements to process claims within FSC and determine adherence to established VA payment protocols; (2) audit outpatient medical claims and pricing methods at VA facilities and other locations where VA had agreements to process claims within FSC and determine adherence to VA protocols, and; (3) to audit the claims processing software solution methodology and pricing tables within FSC and determine overall effectiveness of safeguards, controls, and procedures to ensure adherence to VA payment protocols.

Records further reflected that the contractor was to audit payment rates of 400 medical claims processed between February 1 and June 30, 2009, and provide an assessment of the safeguards, controls, and procedures utilized by the current claims processing software in adjudicating claims and adhering to established rates. A Final Audit summary report was to be submitted 33 business days after award. The J&A for this Mill Bill Claims Audit sole-source stated that CHS was "uniquely capable of meeting VA's requirements within an extremely short critical deliverables and lead time." No other explanation was given as to why the deliverables "were critically needed in a short time" or why CHS, which did not perform the type of work described in the SOW, was "uniquely" qualified to perform the work to justify a sole-source procurement. Moreover, this procurement required an audit and CHS did not provide audit services.

C92031 – Fee Regulation Assessment: Records reflected that this task order was to conduct an analysis of recently authored regulatory documentation promulgating policy relative to VHA eligibility and enrollment activities and VHA purchased (non-VHA) care programs. The scope of the work was to identify relevant inconsistencies or discrepancies between previously established regulatory and recently condensed and consolidated documentation. For every instance of policy conflict, discrepancy, or inconsistency, the vendor was required to offer recommendations for corrective action. The rationale for a sole-source award stated that CHS was "uniquely capable of meeting VA's requirements within an extremely short critical deliverable and lead time." There was no evidence that the program office or anyone else surveyed other vendors before making this determination.

Email records reflected that Ms. Gheen notified CHS that the work would be coming their way on or before July 27, 2009, several weeks before the RFQ was issued and before the J&A for a sole-source contract was signed on August 4, 2009. CHS did not have any specialized skills needed to perform the work to make them uniquely qualified as stated in the J&A. Records reflected that the RFQ was sent to CHS on August 6, 2009, and on August 9, 2009, Mr. DeCoste asked, in an email, for clarification as to the scope of work. The next day, Ms. Gheen responded to him clarifying that the scope was limited to the two products they developed.

We found that the SOW was vague and ambiguous and that even after a Contract Specialist questioned the specifics, Ms. Gheen questioned the accuracy of the scope of work, and the solicitation was revised, the program office still had not adequately defined its requirements. Ms. Gheen told us that she believed it was her idea to issue this task order; she "probably" set the short timeline to "timely produce business requirements;" and she "thought" the contract made a difference. She said that her office was still working on the regulations (21 months later), using CHS's one-time deliverable to decide the direction for her office in the future. Our review of the SOW reflected that this was a very simple requirement that could have been performed by any number of vendors as it

merely required a comparison of proposed and existing regulations relating to VHA eligibility and enrollment activities and VHA purchased care programs.

The SOW for this procurement was vague in that it did not adequately describe the scope of the work to be performed. For example, it did not indicate the number of regulations that needed to be reviewed and compared, or the extent of any proposed changes to existing regulations. The IGCE listed the expected labor categories as a Business Analyst at $300 per hour for 150 hours and Senior Health Care Analyst at $150 per hour for 120 hours. The scope of work was fairly simple in nature, the IGCE was not only excessive but documentation showed that there were discussions with CHS before the RFQ which suggested that the IGCE was prepared to ensure the labor categories and rates were comparable with those on CHS's FSS contract.

Although the IGCE listed two specific labor categories, the RFQ listed a Project Manager and "Resource 1, Resource 2, and Resource 3." There was no explanation why the RFQ had three labor categories compared to two in the IGCE nor was there any evidence that Mr. [redacted] questioned why the work needed to be done by a Managing Partner, Principal, Project Director, and Project Manager whose hourly rates were significantly higher than that of a Senior Health Care Analyst. The lowest priced labor category offered was at the rate of $193.82 per hour which was $43.82 per hour higher than the IGCE. There was also no evidence that Mr. [redacted] questioned CHS's pricing proposal or tried to negotiate (7)(c) more favorable rates even though the proposal was about 24 percent higher than the IGCE or that the estimated hours were 366 compared to 270 in the IGCE (26 percent more hours). Although this was a labor hour task order, which put the risk on the Government, there were no price controls in place.

C92033 – Recovery Audit External Assessment Services: Records reflected that the RFQ was issued to FSS vendors on August 5, 2009, with a response due on August 21, 2009, and that only offers from SDVOSBs would be considered. Although the RFQ was amended on August 13, the due date was not extended. We found that the short deadline for responding and the impact of the significant amendments further shortening the time period did not encourage competition. We also found that the work was to commence on September 1, 2009, the same day that the sole-source Mill Bill Claims Audit contract issued to CHS was to be completed. Records also reflected the title for the requirement included the word "audit" but that the SOW reflected that the requirement was for advisory or consulting services relating to the recovery audit processes, not an audit.

Despite the fact that audit services were not required, Mr. [redacted] sent the RFQ to six (7)(c) vendors on FSS Schedule 520 who provide audit and financial services. He also sent the RFQ to only one vender listed on Schedule 874 – MOBIS, which was CHS. Mr. [redacted]'s decision to issue the RFQ primarily to 520 Schedule holders was inconsistent with his August 3, 2009, Market Research Report, which stated that his market research for the requirement was limited to 874-1 schedule holders. Mr. [redacted] told us that he randomly

selected the vendors from a GSA eLibrary alphabetical listing rather than from the specific schedules. Federal regulations required Mr. [redacted] to send RFQs to vendors who were capable of providing the services needed (48 CFR § 8.405-2), which could not be done by randomly selecting vendors from an alphabetical list. By limiting the time period to reply in conjunction with the decision to issue the RFQ to vendors who provided services outside the scope of the requirements, Mr. [redacted] effectively eliminated competition and guaranteed an award to CHS. (7)(c)

Records reflected no documentation of a price evaluation and Mr. [redacted] accepted CHS's price proposal without conducting the evaluation required by 48 CFR § 8.405-2(d). The IGCE for this procurement specified labor categories and estimated hours and hourly rates for each and ranged from $106,005 to $151,449, excluding travel. CHS's offer was $239,587 without travel. Although the proposed price was 30 percent higher than the high-end IGCE estimate, there was no evidence that Mr. [redacted] compared labor categories, rates and proposed hours, or questioned the difference.

Records further reflected that a comparison of the IGCE and the offer showed that the level of effort proposed by CHS was significantly less than IGCE. The IGCE estimated 1,116 hours, whereas CHS proposed 881 hours (21 percent less). Further, a comparison of the labor categories and associated hourly rates proposed by CHS with the labor categories and rates in the IGCE also showed significant differences. The IGCE identified four labor categories and a range of hourly rates for each: Senior Project Manager ($148.86-$246.85/hour), Analyst ($104.63-$157.98/hour), Associate ($65.08-$93.80/hour), and Project Assistant ($33.62-$54.00/hour). CHS offered: Managing Principal $318.24/hour), Principal ($295.52/hour), Project Director ($236.89/hour), and Project Manager ($193.82/hour). In addition to failing to conduct the price analysis required by regulations, there were no documents to show that Mr. [redacted] considered the impact of the assumptions included in CHS's proposal on pricing or requirements.

C02003 – Assessment of Non-VA Dialysis Bundled Payment Schedule: Records contained no J&A as required regulations for this task order.

C02010 – FSC Dialysis Claims Reimbursement Audit: The RFQ stated that the requirement was to obtain a "highly skilled contractor with specific knowledge of VHA dialysis reimbursement methodologies and policies to conduct an audit of . . . ." Although the RFQ and J&A stated that the basis for not seeking competition for the requirement was the expertise of the vendor, there was nothing in the RFQ or the J&A to support the statement. Despite the level of skill identified in the RFQ, the tasks were generic in nature, such as developing a project plan, a sampling plan, conducting the audit, and providing a final report and presentation.

The requirement was for an audit and CHS did not offer such services on its FSS contract and did not do any audit work for the CBO's office on any prior contract. The J&A

described CHS as providing professional business advisory services, not audit services. Section 5 of the J&A, Demonstration of Contractor's Unique Qualifications, stated that CHS was uniquely qualified because it "possesses a proprietary tool which has the unique capability to unbundle and conduct an audit of complex VA dialysis contract payment schedules and/or Centers for Medicare and Medicaid Services (CMS) Dialysis payment schedules." The J&A further stated that no other contractor "evaluated has the current capability to meet and satisfy the rigorous analytical requirements." Records contained no support for these statements. The RFQ did not state that the audit would require an analytical tool as described in the J&A nor did CHS state in its proposal that they possessed such a tool, that it was required, or that it would be used to conduct the audit. In fact, in its technical proposal, CHS specifically stated that they would be using a (7)(c) **"bundled"** (emphasis added) approach to the audit. Mr. [redacted] told us that he did not know what "proprietary analytical tool" CHS had for this contract, but he said that based on receiving the contract deliverables in Microsoft Excel spreadsheets he believed that Excel was their analytical tool.

Records reflected that the J&A's requirement was not identical to the requirement in the RFQ. The J&A stated that the "schedules," which were not defined or even mentioned in the RFQ, "are comprised of complex databases which incorporate various dialysis procedures and payment structures." The J&A further stated that the "contractor must normalize these data in an effort to demonstrate the capability to **'unbundle'** (emphasis added) the VA's contracted scheduled procedural elements and compare these elements to like elements from the CMS schedules. The analytical comparison methodologies must validate realistically and accurately all dialysis procedural element comparisons." J&A's Section 3 stated that the "requirement is to provide all labor necessary to provide the comparative assessment functions" and described what the vendor must provide. These requirements and specifications were not included in the RFQ and no "unbundling" was required. The RFQ required two audits of a statistical sample of invoices, which was not included in the J&A.

The J&A further stated that it was an emergency situation which required "immediate attention" because a competitive acquisition could "harm the direct care" of veteran patients. Ms. Gheen told us that the reason they went sole-source on this contract was "probably a joint decision" between her and the program manager; however, in a December 30, 2009, email, Ms. Gheen instructed her program office to go sole-source. Records also reflected that there were two SOWs created for this procurement, one competitive and the other sole-source. Ms. Gheen told us that she did not know why two SOWs were created and that she "presumed" that there was a technical reason for it.

The purchase order included a brief statement of the work to be done and stated that the requirement was to conduct an audit of specific claims paid by the FSC in response to claims submitted under the Dialysis Pilot Project (DPP). The contractor was to provide an "adequate audit" for determining the correctness of payments made to dialysis contract

service providers under the provisions of the DPP claims processing contracts managed by FSC to determine adherence to the established dialysis contracted fee schedule for payment of dialysis claims. The work also included an audit of the dialysis claims process software solution methodology. Ms. Gheen told us that CHS's deliverable was an audit report of reviewed claims, reviewing two sets of claims in two different months.

Email records contradicted the reasons stated in the J&A for a sole-source contract. One said that the intent was to save on start-up costs by going sole-source; however, there was no evidence that this anticipated cost savings was included in the IGCE or in the technical or price evaluations. More importantly, this was not a justification for sole-source. An evaluation of proposed costs was required as part of the evaluation process when offers were submitted through competition. Those vendors with knowledge and/or expertise were in a position to offer lower prices, as they would not incur start-up costs.

There was an IGCE in the file dated June 30, 2009, (about 6 months prior to award) by (7)(c)
Mr. [redacted] that reflected a range of costs from $56,000 to $144,000. The IGCE anticipated the following labor categories to estimate the anticipated costs: Senior Project Manager, Lead Auditor, Inpatient Auditor, and Outpatient Auditor. The file also contained a Procurement Request, dated December 30, 2009, that listed the estimated cost of $99,900, which was just below the simplified acquisition threshold. However, there was no documentation supporting the estimated dollar value, such as labor categories, anticipated number of hours, or hourly rates.

Although the price proposed by CHS was within the range of the initial IGCE, it was not clear how the IGCE or a firm-fixed-price proposal could be prepared, because the requirement was for a statistical audit and the RFQ did not identify a universe from which any offeror could estimate the level of effort required to perform the task to prepare a pricing proposal for a firm-fixed-price contract. Email records reflected that Ms. Gheen made the decision to award the task order sole-source to CHS. Emails also reflected that there was no urgency to get the contract awarded, because there was no work to be done at the time. We found that the reason the RFQ did not specify the universe of claims from which a statistical sample could be identified was that no claims had yet been submitted at the time of the procurement.

The file also did not include a price analysis as required under 48 CFR § 8.405. Although the total amount of the proposed price was within the range of the initial IGCE, $56,000 - $144,000, the IGCE was based on an estimated 663 labor hours and CHS's offer of $130,000 was based on a level of effort of 468 hours, which was about 30 percent less. Also, the initial IGCE did not contemplate cost-saving due to a lack of start-up costs, which was one reason cited for the decision to go sole-source. Further, other than a Project Manager, the RFQ did not identify any specific labor category to fulfill the requirement. In comparison, the IGCE was based on a Project Manager and three auditors to perform the work. The proposal submitted by CHS listed a Management

Principal, Project Director, and Project Manager, with the latter having the lowest labor hour rate which was significantly higher than the estimate. Although none of the labor categories proposed included an auditor, neither the CO nor the Program Office questioned the inconsistency.

Moreover, CHS's technical proposal did not describe how they would perform the identified tasks. They merely repeated specific requirements and stated that they would do it. The past performance submission listed two VA projects and one private contract that was in effect from 2004 to 2006 and another that was ongoing from 2000, but none of them included the audit of claims. The proposal also included a number of (7)(c) assumptions that could have impacted pricing and/or performance, but the assumptions were not questioned by Mr. [redacted] or the program office. The technical proposal also listed key personnel, none of whom had any listed auditing experience, although the resume for one person (one of two proposed project directors) indicated that he had a CPA. The other proposed Project Director was a health care consultant with no noted experience conducting an audit. One of the proposed Project Managers was identified as a "highly trained information systems engineer;" however, this type of expertise was not required. The other proposed Project Manager was a healthcare consultant.

Price Reasonableness Determinations

Contracting officers have a responsibility to determine that the price/cost was fair and reasonable before making an award. Although FSS contract labor hour rates were considered fair and reasonable, when purchasing services from the FSS requiring a SOW, the contracting officer had the responsibility to consider the level of effort and the mix of labor proposed to perform the specific task being ordered and for determining that the total price was reasonable. 48 CFR § 8.405-2(d). Federal regulations establish requirements for minimum documentation when placing orders for services requiring a SOW. Id., at §8.405-2(e). These include: the schedule of contracts considered, the evaluation methodology used in selecting the contractor to receive the order, a price reasonable determination as required in 48 CFR § 8.405-2(d), and the rationale for using other than a firm-fixed-price order or performance-based order. One order, C92033, for Recovery Audit External Assessment Services, was paid for on an hourly rate, not a firm-fixed-price. The procurement files for this and the other task orders did not contain documentation showing compliance with 48 CFR § 8.405.2(d) or (e). Although Mr. [redacted] and Mr. [redacted] told us that CHS could not win contracts through a competitive (7)(c) process because their costs were too high, we found no evidence in the files showing any attempt to determine that the total price offered was fair and reasonable or any effort to negotiate lower pricing.

Although many of CHS's proposals were within a reasonable range of the IGCE, a review of individual proposals showed that the level of effort was usually significantly lower than the expected level of effort in the IGCE; labor categories did not correlate

with the IGCE; and proposed hourly rates were significantly higher than the IGCE. All of these issues should have been addressed by Mr. [redacted] in a price analysis prior to award, but were not. We asked Mr. [redacted] for his price evaluations for specific task orders, and he told us that the provision in the FAR states that FSS prices are already determined to be fair and reasonable. He also cited provisions stating that the award was based on best overall value to meet the Government's needs. His responses showed that he did not understand his responsibilities under the FAR when ordering services from FSS contracts for determining that the total price was fair and reasonable. Records contained no evidence that he conducted any evaluation to determine the reasonableness of total cost or if the offer represented the best overall value to the Government considering technical and costs. It seems that CHS was awarded contracts irrespective of what they submitted in their proposal. (7)(c)

Conclusion

We substantiated that Ms. Gheen was improperly involved in all aspects of decisions to award task orders to CHS and in the administration of the task orders. Records and testimony reflected a close relationship between Ms. Gheen and CHS personnel, in particular Mr. DeCoste and a CHS subcontractor, Mr. Perreault. We found numerous emails, which we discussed previously and later in this report, concerning ongoing work relating to specific task orders; showing meetings with CHS personnel; and that invoices and deliverables were sent directly to Ms. Gheen. The documents also showed that CHS contacted Ms. Gheen directly whenever they had a problem or concern. Further, records included a past performance rating completed by Ms. Gheen to assist CHS during the selection process for a contract/task order; notes in the file for one task order indicated that CHS provided personal services to Ms. Gheen; and that some of the products delivered were outside the scope of the task order. In addition, records reflected that Ms. Gheen was involved in the development of requirements and in the decisions to award task orders sole-source to CHS and to modify one task order to add work.

Despite the testimony, including that of Mr. [redacted] regarding Ms. Gheen's direct involvement in decisions relating to the award of tasks orders to CHS, we concluded that Mr. [redacted] failed to comply with the provisions of the FAR as required by warranted contracting officers. For example, he limited competition to SDVOSBs when set-asides against the FSS were not permitted. Even if he believed that he had such authority, he failed to include FAR clause 52.219-14 or equivalent language limiting subcontracting as required by FAR 19.508(e) and VA Information Letter 049-07-07-08. He also failed to ensure that the RFQ was sent to at least three vendors who were capable of meeting the requirements or to conduct a price analysis as required by the FAR. Although he told us that CHS could not get awards competitively because their prices were too high, there was no evidence that he attempted to negotiate fair and reasonable prices before awarding any of the task orders. Moreover, even if he believed that he was being pressured by Ms. Gheen and others in the program office, there was no evidence that he refused to (7)(c)

make an award because it was inappropriate or that he raised his concerns within the acquisition chain of command.

Recommendation 1. We recommend that the Principal Deputy Under Secretary for Health confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Recommendation 2. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Mr. [redacted] and ensure that action is taken. (7)(c)

Results

Issue 2: Whether Ms. Gheen Engaged in a Conflict of Interest

Federal acquisition regulations state that 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. It also states that transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct and that the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. 48 CFR § 3.101-1. Federal acquisition regulations further state that Government contractors must conduct themselves with the highest degree of integrity and honesty. Id., at 3.1002.

The Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest, shall act impartially and not give preferential treatment to any private organization or individual, and employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. 5 CFR § 2635.101(b)(3), (8), and (14). It further states that an employee shall not use her public office for her own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. 5 CFR § 2635.702(a).

Ms. Gheen told us that she did not consider Mr. DeCoste and Mr. Perreault personal friends but that she thought of them as former business associates. She said that she first met them in 1987 and that she and Mr. DeCoste had a longstanding business relationship. Ms. Gheen told us that "like most business people," she and Mr. DeCoste had common goals and targets and that she considered it a very positive business rather than personal relationship. Ms. Gheen told us that theirs was not a friendship "where he and our families get together." However, Ms. Gheen's husband's social networking internet page listed Mr. DeCoste as a "friend," and in a letter, Ms. Gheen's representative told us:

> …Mr. DeCoste and Ms. Gheen have known each other for some 20 years, starting from when Mr. DeCoste was Ms. Gheen's supervisor and mentor. Although Ms. Gheen and Mr. DeCoste developed this mentor-mentee that continued past when Mr. DeCoste left the VA, and although Ms. Gheen's husband has developed an independent friendship with Mr. DeCoste, you will see that Ms. Gheen never sought or received *any* sort of improper benefit from Mr. DeCoste, Mr. Perreault, or anyone else at Corrigo Solutions…Ms. Gheen's husband, who golfs with Mr. DeCoste, went so far as to pay fair market value for a three-day stay at a Colorado time-share unit owned by the DeCoste family…Ms. Gheen has never allowed her long-standing relationship with Mr. DeCoste or any other business or personal associate to shift her focus away from advancing the VA's best interests.

Email records reflected that Ms. Gheen's DCBO employment application, submitted April 6, 2007, contained a copy of her March 31, 2007, resume listing Mr. DeCoste and Mr. Perreault as references. We also found the following email correspondence:

- In a November 30, 2006, email, Ms. Gheen wrote to Mr. DeCoste, "At your convenience, can you send me the contact info for Bob Perreault so I can call him and include it in my application package? Also, I was hoping to use you as a reference – would that be OK with you?"

- In a December 10, 2006, email, Ms. Gheen wrote to Mr. DeCoste, "Also–it looks like I need at least 1 written reference–is that something you could do---I'll draft it but are you OK with signing etc?"

- In a December 10, 2006, email, Mr. DeCoste wrote to Mr. Perreault, "Bob, Patty is applying for my soon to be vacated position and looking for a reference. I told her you'd have no problem with that. Go get it Patty."

- In a December 20, 2006, email, Ms. Gheen wrote to Mr. Perreault, "Bob: sorry I didn't get to speak with you last week on this–seemed like a busy time to even go there. Would you have 10 min sometime this week or next to talk? I'm open at your convenience. Thanks again. Patty"

- In an April 1, 2007, email, Ms. Gheen wrote to Mr. Perreault, "Bob Just wanted to give you an update. Had my interview this past week–didn't really get a warm and fuzzy over the whole thing…I decided that it's probably worthwhile to go ahead and throw my name in for the Purchased Care Deputy as well–so wanted to verify again that you're OK with me using you as a reference…Thanks again for the support. Very much enjoyed seeing you at Chuck's party. Patty"

- In a June 28, 2007, email, Ms. Gheen told Mr. Perreault that she was tentatively selected for the DCBO for Purchased Care. She wrote, "I was wondering if you might be interested/available etc in helping me develop a strategic plan for the future direction of Purchased Care within CBO. I think we have tons of opportunities to make some positive changes and intend to have a few contracts to support in the development of this strategic plan. If you have availability, can you send me something on your current company so I can start the process? I'm looking for this work to occur in September of this year (I'm in Europe 2 wks in August) so if that works for your schedule I'd love to have your input on this."

- In a July 29, 2008, email, Mr. DeCoste called Ms. Gheen "sister" when making arrangements to meet. In response, Ms. Gheen told him that she planned to have "a drink" with two individuals (she later identified them to us as contractors) the next evening. In his email response, Mr. DeCoste told Ms. Gheen that he had her "down for dinner tomorrow," offered to "hook up" with the three of them, and Ms. Gheen said that she was "open" to his "suggestion" or she could "meet them and then find you after." Ms. Gheen told us that she did not know why Mr. DeCoste referred to her as "sister" and that she met with the contractors about work. She said that "one could call it socializing if one wished."

- In an October 1, 2008, email, Ms. Gheen sent a copy of her biography from her VA email account to Mr. DeCoste's CHS email account. Ms. Gheen told us that she did not know why she sent Mr. DeCoste her biography.

- In a January 20, 2009, email, Mr. DeCoste sent from his CHS email account to Ms. Gheen's personal email account, he wrote, "Patty, as discussed we'd be eager to talk about the physicians supply study. Let us know what time that works for you." Ms. Gheen told us that she did not know why Mr. DeCoste sent potential contract-related information to her personal email account and that she did not know how he obtained her personal email account.

- In a September 29, 2009, email Mr. Perreault sent from his CM email account to Ms. Gheen, he referenced a named person and wrote, "He left VA and went to Kaiser Permanente…I don't know if he's the right fit for the job but I would recommend you give him a good look." Ms. Gheen told us that Mr. Perreault sent her this email unsolicited.

- In a September 29, 2009, email reply Ms. Gheen sent to Mr. Perreault, with a copy to Mr. DeCoste, she wrote, "I have actually heard good things about him, so good to hear your comments as well. His experience sounds just like what we need in that slot. I am requiring that they submit nominations to me prior to final selection so hopefully we'll see that name come through." Ms. Gheen told us that at the time she replied to Mr. Perreault's email, she did not actually know the person that

Mr. Perreault recommended and that her response was just her being polite. She also said that she did not know if Mr. DeCoste had a role in this matter and that she did not recall why she sent him a copy of the email that she sent Mr. Perreault. However, Ms. Gheen also told us that the person that Mr. Perreault recommended was already a VA employee and a COTR on another contract on the same project as CHS, Mr. DeCoste's employer.

Email records reflected that on July 20, 2009, Ms. Gheen sent a completed Retirement Annuity Estimate Worksheet to an HR Specialist with projected retirement dates of August 1, 2010, and February 13, 2011. Email records further reflected that on March 24, 2010, Ms. Gheen sent an email to a VA Office of General Counsel attorney stating, "I am currently approximately 1 year from a potential retirement from VA employment. I am considering other options for employment after my retirement. I would greatly appreciate 30 min of your time (or the appropriate VA Ethics Counsel) to discuss what restrictions may apply, any regulatory guidance that exists or general information your office can provide me as I began exploring my options."

In his reply email, the attorney wrote, "I am one of the attorneys that provides ethics advice. I have attached general guidance on post-employment restrictions for senior employees-for 2010 employees whose base pay exceeds $155,440.50. I am currently available the afternoon of the 5th and the morning of the 8th." The attorney told us, in an email, that he spoke with Ms. Gheen on April 5, 2010, but he said that he could not provide the specifics of their discussion. He said that he also sent her a Post-Government Service Ethics Questionnaire, which he said focused on applying procurement integrity restrictions.

Mr. Perreault told us that Ms. Gheen "confidentially" asked him in September or October 2010 to give her some advice about post-VA employment. He said that their conversation was very general and included how someone might develop and consider career changes to include remaining in VA, seeking employment with a firm, or how to develop a "self-employment posture." He said that there was no offer of employment or any discussion of any specific employment options. Ms. Gheen told us that she spoke to Mr. Perreault about post-VA employment and that she discussed having him review her resume. However, she said that their discussion did not include specific companies or a specific plan and that she was not negotiating for employment. She also said that "in retrospect" her discussions with Mr. Perreault "might not have been my best choice."

Email records reflected the following correspondence in which Mr. Perreault was actively pursuing a VA contract on behalf of Health Reliance:

- In an April 3, 2009, email with the subject line "Health Reliance (the rehab proposal) Request to Meet," Mr. Perreault told Ms. Gheen, "The Health Reliance folks… would like to meet with you to discuss their idea and capability and how VA might benefit…" In a May 28 email, he asked her, "Any reaction to the

Rehab. Network idea presented by Health Reliance?" In a September 24 email, he asked, "If you have any interest in pursuing the Health Reliance rehab idea?" Ms. Gheen replied, "We are but it probably won't happen until mid FY10."

- In a September 25, 2009, email, Ms. Gheen told Mr. Perreault, "Meeting with Dep not so good yesterday – very long story…" Mr. Perreault replied, "Remember what I said about me saving contacts to very important issues. Call me any time you want to discuss." Ms. Gheen responded, "I'll work it – but do appreciate the offer. Don't think I would ask you to intercede…"

- In a January 26, 2010, email, Mr. Perreault told Ms. Gheen, "I've talked again to the Health Reliance folks…They would like to meet one more time and discuss their concept…Let me know what you think." In a March 19, email, he told her, "The Health Reliance folks ready to meet/discuss potential rehab networks for both VISN 4 and 11." In an April 6 email, he told her, "I'm going to reach out today by email to [name] and [name] to suggest a meet with Health Reliance. I'll keep you in the loop."

- In an August 25, 2010, email, Ms. Gheen told Mr. Perreault, "I wanted to follow-up on the Health Reliance item but also wanted to touch base on my pending retirement date --- next Feb…wanted to get your thoughts on where that might lead…" Mr. Perreault replied, "I will be very happy to advise you. You have great talent and record…need to talk about what you want to do, real goals…full time with a firm, consulting for a firm on ad-hoc or retainer deal, or other."

Mr. [redacted] told us that when he began working within the VHA CBO, Mr. DeCoste was the Acting CBO, and when Mr. DeCoste retired, Ms. Gheen took over most of his responsibilities. He said that he (Mr. [redacted]) and Ms. Gheen argued about work, her staff, and her unwillingness to properly supervise favored employees and that she was defensive and unreceptive about these employees. He further said that she did not want to hear anything negative about them. As an example, Mr. [redacted] told us that there was a "uniquely special relationship" between Ms. Gheen and Mr. DeCoste "going back to the days when she worked for him as a clerk in Boston" and that "he's off limits to talk about." He said that there were "several other old VA employees that she's very close to that have contracting firms." Further, he said that Mr. DeCoste "networks" and he "uses his influence" with VA employees to obtain VA contracts. Mr. [redacted] told us that Mr. Perreault was extremely close to Mr. DeCoste and that Mr. Perreault owned a consulting firm that provided services to the VHA CBO. (7)(c)

Mr. [redacted] told us that in meetings he attended with Ms. Gheen and CHS representatives, as it related to VA contracts, the meetings were fairly formal and did not differ from those with other contractors. However, he said that he knew that Ms. Gheen had informal conversations with CHS representatives, because he said that Ms. Gheen would comment that she called "Chuck" or "Bob" or "[got] with Chuck." He further said that in his

opinion, Ms. Gheen's relationship with CHS might cross the line but that he was unsure if it violated any regulations.

In addition to the above listed emails between Ms. Gheen and Mr. DeCoste, we found the following:

- In an April 17, 2007, email with a subject line of "Just catching up," Ms. Gheen told Mr. DeCoste that she just returned from "a great vacation" and that "[Name] has been pestering me to give her your contact info – didn't want to do that without clearing with you. If it's OK with you I'll just start a message with both of you and then you can take it from there. You never know, she might find you some business – she has some great contacts in GSA so maybe there's an opportunity. Talk with you soon." On April 23, Mr. DeCoste responded, "If you get a chance later today give me a call. As you would expect, VA continues to amaze. By all means, have [Name] contact me."

- In a June 27, 2007, email with a subject line of "info," Ms. Gheen told Mr. DeCoste, "Here's the most recent BIM listing – still look for the other stuff." Attached to the email was a listing of various VHA Business Implementation Managers and their point of contact information. In a follow up email to him, dated June 28, 2007, she told Mr. DeCoste, "also meant to mention to you – I'm working on a SOW to have a couple of folks come in and assist me with developing a strategic plan for Purchased Care…any chance of you and I brainstorming on the SOW? I'd of course love to have you work with me on this -- I was also hoping to get a little of Bob Perreault's time if at all possible."

Mr. [redacted] told us that he heard from colleagues that Mr. DeCoste was a former high-level VA official and that many staff members within VHA CBO were in their positions because of him, to include Ms. Gheen. Ms. [redacted] told us that when she met Mr. DeCoste at a meeting in Washington, DC, he boasted about his relationship with present and past VA employees and about his relationship with Ms. Gheen, stating that he knew how "Patty" would react and that CHS "can take care of it." Ms. [redacted] expressed a fear of retaliation by Mr. DeCoste, and she said that Mr. DeCoste had "control over present -- over past and present employees that work within VA." She said that although she had no first-hand knowledge that Ms. Gheen's friendship with Mr. DeCoste or Mr. Perreault created an unfair advantage for CHS, she said that "it would be foolish" of her to think that "their friendship and their motivation" in directing VHA in a number of initiatives did not "fuel off" one another. (7)(c)

We found email records that reflected the extent that one CHS Senior Management Official went to gain inside knowledge of a VA Senior Official. In an October 5, 2009, email with a subject line of "More on [VA Senior Official]," a CHS Senior Official told Mr. DeCoste and Mr. Perreault that he gathered information on the VA Senior Official, to include personally identifiable information, education and employment history, and "W-2

compensation." In an October 8, 2009, email with a subject line of "[VA Senior Official] Background," the CHS Senior Official sent Mr. DeCoste and Mr. Perreault a memorandum with a subject line of "Confidential Background Information on [VA Senior Official]." The memorandum discussed "highlights" of previous employment and perceived personality traits, such as "he is a very quiet, non-aggressive and non-confrontational person. In key executive and board meetings, he is easily rolled over by Type A personalities."

The memorandum also included "preliminary questions/observations" of the VA Senior Official. For example, one was "Will [VA Senior Official] be rolled over by strong type A subordinates (e.g. VISN Directors, CBO)? If so, needed changes may be difficult unless a firm like [CHS] is working with subordinates." Another was, "Will [VA Senior Official] use outside consultants to deal with issues that he doesn't want to directly or personally confront? If so, [CHS] needs to get on his short list." The CHS Senior Official told Mr. DeCoste and Mr. Perreault that the background information "paints a different picture of [VA Senior Official] than the strong leader profile we have been talking about…" He told them that after they read the memorandum that he wanted to "talk about what opportunities may be available to [CHS]."

Conclusion

We concluded that Ms. Gheen's closer-than-arms-length relationship with Mr. DeCoste and Mr. Perreault created the appearance, if not an actual, conflict of interest that was not only problematic for Ms. Gheen's subordinates but detrimental to the contracting process. Federal regulations required that Ms. Gheen conduct VA business in a manner above reproach and with complete impartiality; however, her interactions with Mr. DeCoste and Mr. Perreault reflected a familiarity and comfort level that went beyond that of former professional colleagues. Ms. Gheen's relationship with Mr. Perreault was such that he even offered to intervene with a VA senior official on her behalf.

Ms. Gheen elicited their support when she applied for Mr. DeCoste's soon-to-be-vacated position and that once selected for a comparable position, she reached out to Mr. Perreault to ask for his help in developing a strategic plan for her organization. Additionally, she asked him for his company's information and told him that she expected "a few contracts to support in the development of this strategic plan." She also told Mr. DeCoste, who at that time worked for CHS, that she was developing a SOW to obtain assistance in her strategic plan; she wanted to brainstorm with him about it; and she would "love to have" him work with her on it. At the same time, Ms. Gheen may have aided Mr. DeCoste in soliciting CHS contracts when she provided him a list of VHA Business Implementation Managers and their point of contact information, as well as, when she provided his name to an individual with "great contacts in GSA" who "might find" him business.

As we discussed in the previous issue, Ms. Gheen's office awarded their first task order to CHS, valued at $765,000, about 2 months after Mr. DeCoste reached out to them wanting to "reconnect both personally and professionally," and that over the next 2 years, Ms. Gheen's office awarded CHS eight task orders with an aggregate value of about $2.9 million. We found that three of these task orders were improperly awarded as set-asides, four were sole-sourced, and one limited competition to ensure that CHS got the award.

Further, Mr. Perreault felt comfortable enough with Ms. Gheen that he recommended a particular applicant for a position within her organization, and in response, she told him, as well as Mr. DeCoste, that she would "hopefully" see the individual's name on the list of candidates. Further, Ms. Gheen, for an unrecalled reason, sent Mr. DeCoste her biographical information. She also sought information from within VA concerning her VA retirement, and she then "confidentially" asked Mr. Perreault to review her resume and about post-VA employment, to include seeking employment with a private entity. Moreover, after Mr. Perreault advocated for a contractor, Health Reliance, for over a year, Ms. Gheen told him that she not only wanted to "follow-up on the Health Reliance item" but she also wanted to discuss her retirement and "where that might lead."

Additionally, Ms. Gheen's subordinates expressed that she and Mr. DeCoste had a "special relationship;" she was protective of him; and their relationship was so close that one employee feared retaliation by Mr. DeCoste. Mr. DeCoste vocally expressed that he had a close relationship with Ms. Gheen and that he knew how to take care of her reactions. Moreover, Mr. DeCoste was a friend of Ms. Gheen's husband. While Mr. DeCoste and Mr. Perreault no longer served in their VA capacities, there was evidence that they still wielded undue influence over Ms. Gheen, diminishing her position and authority as a VHA senior leader.

More disconcerting was that VHA CBO employees believed that Mr. DeCoste used his relationships and influence on his former colleagues, to the extent of putting fear in some, to obtain VA contracts and that a CHS Senior Management Official felt a need to conduct a background investigation on a VA Senior Official with oversight of Ms. Gheen's organization to determine how CHS could best use his personality traits to their advantage in obtaining VA contracts.

Recommendation 3. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Recommendation 4. We recommend that the Principal Deputy Under Secretary for Health inform CHS, as a VA contractor, of their responsibility to conduct themselves with the highest degree of integrity and honesty.

Results

Issue 3: Whether Ms. Gheen Failed to Follow VA Security Policy

VA policy states that users of VA information and information systems are responsible for: (1) complying with all Department information security program policies, procedures, and practices; (2) attending security awareness training on at least an annual basis; (3) reporting all security incidents immediately to the system or facility ISO and their immediate supervisor; (4) complying with orders from the VA CIO directing specific activities when a security incident occurs; and, (5) signing an acknowledgement that they have read, understand, and agree to abide by the VA National Rules of Behavior on an annual basis. VA Directive 6500, Paragraph 3(f), (August 4, 2006).

VA policy identifies VA sensitive data as all Department data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information. The term includes information whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, proprietary information, records about individuals requiring protection under various confidentiality provisions such as the Privacy Act and HIPAA Privacy Rule, and information that can be withheld under the Freedom of Information Act. It states that examples of VA sensitive information include investigatory and law enforcement information and other information which, if released, could result in violation of law, harm, or unfairness to any individual or group, or could adversely affect the national interest or the conduct of Federal programs. VA Directive 6500, Paragraph 5(q), (August 4, 2006).

VA policy states that "VA sensitive information" included information entrusted to the Department; any person who has access to and stores VA sensitive information must have written approval from their VA supervisor and ISO before sensitive information can be removed from VA facilities; and VA sensitive information, to include all sensitive information entrusted to VA, must be in a VA protected environment at all times, or it must be encrypted. VA Handbook 6500, Paragraph 6c, and Appendix G, Paragraph 2(d) (September 18, 2007). It also states that VA employees may transport, transmit, access, and use VA sensitive information outside of VA facilities only when their VA supervisor authorizes it in writing and that if non-VA owned equipment must be used, a waiver must be in place. VA Handbook 6500, Paragraph 6c(3).

Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall not allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. Further, nonpublic information is information that the employee gains by reason of Federal employment and that she knows or reasonably should know has not been made available to the general public. 5 CFR § 2635.703.

Training records reflected that Ms. Gheen completed the following Privacy, Information Security Awareness, and Ethics training:

- VA Privacy and Information Security Awareness and Rules of Behavior on 07/25/2011, 07/06/2010, 09/19/2008, 12/18/2007
- Information Security 101for Executives on 12/23/2009
- General Employee Privacy Awareness on 12/23/2009, 10/03/2008
- VA Privacy Awareness on 12/23/2009, 12/11/2008, 10/03/2008, 06/15/2007
- Privacy Awareness for Senior Executives on 12/23/2009, 10/03/2008, 09/01/2008
- Ethics Training on 09/30/2011
- Ethical Practices in Business and Management on 07/05/2009
- Ethical Leadership; Fostering an Ethical Environment & Culture on 05/16/2008, 04/30/2008

Email records reflected two occasions, June 24 and June 26, 2008, when Ms. Gheen sent SOWs for VA contracts from her VA-assigned email account to her personal email account, but we found no emails reflecting that she sent them back to her VA-assigned email. Ms. Gheen told us that she did not encrypt the SOWs prior to sending them to her personal email account. She said that she was "probably working on them at home" on her personal computer; she sent the SOWs to her personal email account for her own convenience; she did not do it "with very much frequency;" and her personal computer was easier to use than her VA-issued laptop. She also said that she took the annual VA security training and that it was probably not a wise choice on her part to work on VA contract documents on her personal computer rather than her VA-assigned laptop.

In a letter, Ms. Gheen's representative told us, and provided copies of the documents, that Ms. Gheen stored six documents on her personal computer related to VA contracts; however, he said that none of these contracts were related to CHS. The documents reflected that three were related to a draft performance work statement for VA Office of Information & Technology Product Development, which addressed the Health Care Efficiency Initiative, Non-VA Care Claims Processing Support. Each of these drafts were labeled as being "Acquisition Sensitive Information." Within one of the drafts, it noted that Acquisition Sensitive Information shall be marked "Acquisition Sensitive" and shall be handled as "For Official Use Only." Another document was a Task Order Request for a Blanket Purchase Agreement – VA101-(049A3)-BP-0126. It was noted that the contractor shall provide services to support the Purchased Care Program Integrity and Data Analytics Section in responsibilities to provide cost estimation services to

assess and estimate new programmatic areas including new legislative, programmatic and policy initiatives. The contractor was asked to provide services under this blanket purchase agreement for Ad-Hoc Consulting supporting VHA CBO Purchased Care.

We also found that Ms. Gheen sent Mr. DeCoste, in an email, a copy of an OIG draft report and that Mr. DeCoste then disseminated it to Mr. Perreault and CHS staff.

- On July 21, 2009, Ms. Gheen sent an email to Mr. DeCoste's CHS email account, and she said, "IG as requested – likely to be released next week." Attached to the email was a copy of an OIG draft report: *Audit of Veterans Health Administration's Non-VA Outpatient Fee Care Program.* The draft's cover page reflected the following: "This is not a final OIG report and is subject to revision. Recipients of this draft report must not, under any circumstances, show or release its contents for purposes other than official review and comment. It must be safeguarded to prevent publication or other improper disclosure of the information it contains. This draft and all copies of it remain the property of the OIG."

- On July 21, 2009, Mr. DeCoste forwarded the OIG draft report to Mr. Perreault and CHS staff, and he wrote, "This is embargoed info provided in advance to support a just requested change in focus of our ongoing Risk Management effort. Interesting reading but nothing I don't think we weren't aware of. Appreciate your keeping the report under wraps until VA releases. Thanks."

OIG records reflected that we released the *Audit of Veterans Health Administration's Non-VA Outpatient Fee Care Program* (Report No. 08-02901-185) on August 3, 2009, or 13 days after Ms. Gheen emailed it to Mr. DeCoste in draft format. We also found that this draft audit report was consistent with a contract awarded to CHS in late August 2009 for a VHA CBO Purchased Care Recovery Audit External Assessment (VA741-C92033).

Conclusion

We concluded that Ms. Gheen did not comply with VA policy when she sent unencrypted SOWs containing VA sensitive information, some marked as "Acquisition Sensitive Information," to her personal email account so that she could work on them using her personal computer. VA policy requires that VA sensitive information be kept in a VA protected environment at all times; written approval must be obtained before it can be removed; and it must be encrypted if not in a VA protected environment. Further, she did not comply with VA policy and misused her position when she released non-public VA sensitive information to Mr. DeCoste to give him inside knowledge of an OIG draft audit report to further his and CHS's private interests. The draft clearly stated that it must be safeguarded and not released, under any circumstances, and Ms. Gheen willingly and with forethought forwarded it to Mr. DeCoste. Moreover, Mr. DeCoste acknowledged

that it was protected information when he disseminated it to other CHS employees stating that it was "embargoed info provided in advance" for the benefit of CHS.

Recommendation 5. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Recommendation 6. We recommend that the Principal Deputy Under Secretary for Health ensure that VA sensitive information is properly removed from Ms. Gheen's personal computer and personal email account.

Results

Issue 4: Whether Ms. Gheen Failed to Testify Freely and Honestly

Federal regulations state that employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. 38 CFR § 0.735-12(b). VA policy provides penalties of reprimand to removal for the intentional falsification, misstatement, or concealment of material fact in connection with employment or any investigation, inquiry or proper proceeding. VA Handbook 5021, Part I, Appendix A (April 15, 2002).

The U.S. Court of Appeals for the Federal Circuit, determined that a lack of candor is a broader and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, under the circumstances, should have been disclosed in order to make the given statement accurate and complete. *Ludlum v. Department of Justice*, 278 F.3d 1280 (Fed. Cir. 2002); *see also*, *Steverson v. Social Security Administration,* 383 Fed. Appx. 939, 2010 U.S. App. LEXIS 12378 (Fed Cir.)(unpublished op.).

Ms. Gheen initially told us that since Mr. DeCoste and Mr. Perreault retired from VA, she no longer had a working relationship with them and that she did not have a personal relationship with either of them. She said that she was not "fully familiar" with Mr. DeCoste's post-VA employment activities; she "guess[ed] he's employed by [CHS]" and did not "know much more than that;" and her office issued a couple of contracts with CHS. Ms. Gheen further said that although she and Mr. DeCoste had a longstanding business relationship, they did not have a friendship "where he and our families get together or any of that."

Ms. Gheen also initially told us that she never directed a VA official to award a contract to CHS and that she was not involved, whatsoever, in the contract award or evaluation process for any contract. She said that she did not know why noncompetitive contracts

were awarded to CHS or what justification could be used. She said, "I do not get involved at all in the contracting process." Ms. Gheen told us, "My only involvement would be to direct my staff to develop a contract, to obtain work, but not who they contract with, how we get the contracts, any details around the solicitation process." Ms. Gheen said that "it surely was not my intent to even be involved at all which is why you would never see me get involved in any discussions about who the contract was going [to]." She said that she wanted to make sure that when they contracted, they "had the broadest choice of vendors" and that they "paid attention" to make sure that they got the "right assistance at the right time." She also said that she was not "at all involved in selection of who [was] awarded contracts" and that if OIG looked at the contract records, we would not see her "name on those records." However, she said that once a contract was awarded, she stayed very involved with all the activities under her purview.

Ms. [redacted] told us that Ms. Gheen was responsible for all actions coming from the Denver HAC, to include any procurement actions. She said that she worked within the Federal and State governments for over 25 years and that she never saw an official at Ms. Gheen's level "muddle in that level of affairs" or "with their fingers in the pot, quote/unquote, at that level." She further said that Ms. Gheen wanted to know about selection process and "who's in the bucket when you do a GSA search," which she said, in her opinion, was considered unusual. (7)(c)

- In a January 10, 2010, email related to the sole-source Dialysis Claims Reimbursement Audit contract given to CHS, Ms. [redacted] told Mr. [redacted] "I finally had the time to read thru all of this and it stinks like 3 day old fish -BAD. Patty thinks it is going to be [a]warded by Feb 1. Good thing you got Monty to sign it..... Better he than you in an orange jumpsuit." On January 11, Mr. [redacted] replied, "Actually, we decided to use my version so many of the problems should have been fixed. Except of course the fact that this is a Sole Source..."

Ms. [redacted] told us that Mr. [redacted] asked her opinion on this contract. However, she said that Ms. Gheen told her (Ms. [redacted]) to "stay out of [it]" and Ms. Gheen directed Mr. [redacted] "to move this through to award."

Mr. [redacted] told us that Ms. Gheen was "hands on" with her contracts, both the competitive and non-competitive contracts. Mr. [redacted] told us that he tried to limit Ms. Gheen's contract involvement, because he said that she was the senior official in charge of all the activities and he wanted to "insulate" her. He said that Ms. Gheen's involvement extended to funding availability and that she read most of the SOWs. He also said that she was a "bit of a micro-manager" in that she wanted to see what was being purchased. Moreover, Mr. [redacted] told us that Ms. Gheen worked closely with the contractors because much of what they did affected her strategy and the strategic plan of the organization. (7)(c)

Ms. Gheen initially continued to deny involvement in the contracting process; however, contrary to her assertions, we found the following emails:

- In a June 28, 2007, email, Ms. Gheen told Mr. DeCoste, "I'm working on a SOW to have a couple of folks come in and assist me with developing a strategic plan for Purchased Care – kind of a road map for me – it would be something very focused on things such as what the organizational structure should look like, long term strategies for changes, opportunities for future business process improvement etc etc. Any chance of you and I brainstorming on the SOW? I'd of course love to have you work with me on this – I was also hoping to get a little of Bob Perreault's time if at all possible. I'm not intended though for this to be something that would be a group effort (i.e. all the directors in HAC, FEE and HERO) but something that would assist me personally with a plan on how to move forward." (Mr. DeCoste began working for CHS in May 2007 and had not yet fulfilled his 1-year cooling off period.)

- In a June 29, 2007 email, Ms. Gheen told Mr. DeCoste, "I've started a SOW to send to OAMM. They still contend that I cannot go directly to only 1 SDVOB without OGC review, a sole source justification etc etc etc. So I'm going to request that they go to 2 SDVOBs. Don't ask me why this is ever so difficult. I have a weekly meeting with the new KO for us and she specifically told Ed and I yesterday that OAMM had not yet developed the rules they needed to implement this public law. Anyway, I've started this draft and wanted to send it to you – I also would somehow like to include Bob Perreault but not sure how to get him from a contractual standpoint – any ideas?" Attached to the email was an SOW that referenced the general objectives and requirements for a project to assist the DCBO in developing a strategic plan for management of the new combined business line.

- In a March 31, 2008 email sent from Mr. [redacted]'s personal email account, he asked Ms. Gheen if she knew when the Fee Study contract would be awarded. Ms. Gheen replied, "The technical team is finalizing their analysis today – supposed to be sending me notes at the end of today – so I'm hoping by the end of this week." (Ms. Gheen identified Mr. [redacted] as a VA contractor.) (7)(c)

Ms. Gheen told us that her reply to Mr. [redacted] was an "innocent response" and that in retrospect she should have referred Mr. [redacted] to the contracting officer. She said that she did not try to "overstep [her] bounds." She identified Mr. [redacted] was one of the contractors that she told Mr. DeCoste she planned to meet for "a drink" in her July 29, 2008, email to him (Mr. DeCoste). Ms. Gheen told us that she understood the "issue of appearance" concerning her interactions with Mr. [redacted]

- In a January 20, 2009, email that Mr. DeCoste sent to Ms. Gheen's personal email account, he said, "Patty, As discussed we'd be eager to talk about the Physician Supply Study. Let us know a time that works for you."

Ms. Gheen told us that she did not know why he sent the email to her personal account and that she did not know how he got her personal account information.

- In a July 12, 2009, email, Ms. Gheen told Mr. DeCoste, "Want to talk about a regulation review effort that I briefly discussed with Bob P last week. Open on Monday at 8am, 11, noon and 4pm mountain time. Also at my office today (yes, Sunday) if you happen to be totally bored and want to talk work."

- In an August 11, 2009, email regarding a Request for Quote (RFQ) – VA-741-09-RP-0063 CBO Fee Regulation Rewrite Assessment, Ms. Gheen asked Ms. [redacted] "So I don't see the Fee Reg re-write – what happened to those products? The vendor is supposed to review both enrollment and fee reg re-write efforts."

Ms. Gheen told us that this email was her making sure the business requirements were clear. She said that she "would be involved in helping" make sure the "business requirements were very clear." She also said that her asking about the status of an RFQ was her "paying attention to business dates and time" due to delivery schedules.

- In a September 12, 2009, email string regarding the FSC Mill Bill Claims Audit contract, a CHS employee told Mr. DeCoste, "The COTR Nazi is working on a Saturday…wanted to keep you in the loop." On September 14, 2009, Mr. DeCoste forwarded the email to Ms. Gheen and asked, "Help me out here. Is there something going on that requires the scrutiny and depth of oversight [redacted] is now implementing in this project. Talk about overkill."

- In a December 29, 2009, email, Mr. [redacted] told Mr. [redacted] that he "retained both SOWs (Sole Source and Competitive) which will allow us to push this out quickly. I just need a final decision on which approach you would prefer." In a December 30 email, Mr. [redacted] told Ms. Gheen, "Your memory is correct. When I left on Thursday we were ready to go sole source…[Name] asked him to change it to a competitive contract…this calls for [Name] to submit the original SOW or your approval for a competitive contract process at a lower price." Ms. Gheen replied, "We need to go sole source." Mr. [redacted] then told Mr. [redacted], "I know you talked to Patty yesterday and [redacted] about this contract. Patty believed we were going ahead with the original numbers and the sole source contract. As you can see she has asked that we go with the original sole source contract."

Ms. Gheen told us that this email string was in reference to her working with her two managers and trying to get the contract quickly awarded, because she said that CHS had

unique experience with community dialysis services. She said that the intent of issuing the contract as a sole-source was that CHS previously completed a similar contract and that they had a proprietary analytical tool with a unique ability to perform the required task. However, Mr. [redacted] told us that he believed that CHS's "analytical tool" was nothing more than a Microsoft Excel spreadsheet. (7)(c)

Ms. Gheen told us that this was the one case that she forgot to mention previously and she said that she understood how her involvement in the process for this contract might be misinterpreted. She said that she was "involved in the business need to decide how we're going to get a business need done." She told us that whether she was involved with other contracts would depend on the definition of involvement. She said that her involvement was in developing business requirements from a "strategic and operational perspective" and that she was not involved in writing RFQs or purchase orders. She also said that she considered writing SOWs a part of the business process

Conclusion

We concluded that Ms. Gheen did not testify freely and honestly during our investigation. She told us that she had no relationship, other than a long-standing professional relationship, with Mr. DeCoste, and that their families did not "get together." However, Ms. Gheen failed to tell us that her husband and Mr. DeCoste were friends and that they golfed together. Further, we found numerous email messages between Ms. Gheen and Mr. DeCoste, before and after his VA retirement that expressed a relationship beyond that of professionals. In an email sent before he retired, Ms. Gheen told Mr. DeCoste that she would write the recommendation that he was to sign and provide her for her application package for the position that he was vacating. In emails sent after he retired, Mr. DeCoste made an endearing reference to Ms. Gheen as "sister;" made arrangements to meet her for dinner; she sent him a copy of her biography; and she asked him if she could forward his contact information to a person that might help him find business.

Furthermore, Ms. Gheen's subordinates told us of a relationship that went beyond that of professionals. Mr. [redacted] told us that they had a "uniquely special relationship" and that Ms. Gheen was protective of Mr. DeCoste. Mr. [redacted] told us that they were in constant contact, and Ms. [redacted] told us that due to Ms. Gheen's relationship with Mr. DeCoste, she was fearful of retaliation directed by Mr. DeCoste. Moreover, Ms. Gheen willingly and with forethought sent Mr. DeCoste, at his request, an OIG privacy protected draft audit report, which stated that it was the property of the OIG and was to be safeguarded, clearly the action of a relationship beyond that of a VA employee and contractor. (7)(c)

In addition, Ms. Gheen told us that she never offered CHS any information that would give them an undue advantage in contracts and that she went out of her way to keep a distance from the contracting process to avoid undue influence. Contrary to her assertions, Mr. [redacted] told us that Ms. Gheen had total impact and oversight of everything

within her scope of supervision. He said that there were rumors that she discussed contract requirements with Mr. DeCoste and that he therefore knew the contract requirements and target budget in advance. Mr. [redacted] told us that Ms. Gheen instructed him to write sole-source contracts and justification letters to award contracts to CHS, and he said that when he questioned this, he was removed from his Project Manager position.

Email records and the discussion in Issue 1 above also reflected Ms. Gheen's extensive contract involvement. One email reflected that Ms. Gheen asked Mr. DeCoste, post-VA retirement, to brainstorm with her on an SOW and told him that she would "love to have you work with me on this." Another email reflected that a contractor asked Ms. Gheen when a contract would be awarded, and she replied with information about the technical team and when to expect the award. In yet another, Mr. DeCoste asked for Ms. Gheen's help with "the COTR Nazi." In another email, Ms. Gheen told her subordinates to go "sole-source" on a particular contract. Further, Mr. [redacted] told us that Ms. Gheen was "hands on" with both competitive and non-competitive contracts. (7)(c)

Recommendation 7. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Comments

The Principal Deputy Under Secretary for Health was responsive, and his comments are in Appendix A. We will follow up to ensure that all the recommendations are fully implemented.

JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Appendix A

Principal Deputy Under Secretary Comments

Department of Veterans Affairs **Memorandum**

Date: April 3, 2012

From: Principal Deputy Under Secretary for Health (10A)

Subject: **Administrative Investigation, Improper Contracts, Conflict of Interest, Failure to Follow Policy, and Lack of Candor, Health Administration Center, Denver, CO**

To: Assistant Inspector General for Investigations (51)

1. The draft report, including the findings and conclusions, has been reviewed carefully.

2. Maintaining the integrity of the procurement process is essential. The report describes situations which are unacceptable. After consultation with the Department of Veterans Affairs (VA) Office of Human Resources and Office of General Counsel about what administrative responses are appropriate, this office will ensure that appropriate actions are taken. The attached action plan provides details about how each recommendation is to be addressed.

3. Thank you for the opportunity to review the draft report. If you have any questions, please contact Linda H. Lutes, Director, Management Review Service (10A4A4) at (202) 461-7014.

Robert Jesse, M.D., PhD

Attachment

Principal Deputy Under Secretary's Comments to Office of Inspector General's Report

The following Principal Deputy Under Secretary's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommendation 1. We recommend that the Principal Deputy Under Secretary for Health confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Comments: The Principal Deputy Under Secretary for Health will confer with OHR and OGC to obtain guidance regarding whether administrative action, if any, should be initiated. We will notify OIG by August 15, 2012, about responses from OHR and OGC as well as any actions taken.

Recommendation 2. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Mr. [redacted] and ensure that action is taken. (7)(c)

Comments: The Principal Deputy Under Secretary for Health will confer with OHR and OGC to obtain guidance regarding whether administrative action, if any, should be initiated. We will notify OIG by August 15, 2012, about responses from OHR and OGC as well as any actions taken.

Recommendation 3. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Comments: The Principal Deputy Under Secretary for Health will confer with OHR and OGC to obtain guidance regarding whether administrative action, if any, should be initiated. We will notify OIG by August 15, 2012, about responses from OHR and OGC as well as any actions taken.

Recommendation 4. We recommend that the Principal Deputy Under Secretary for Health inform CHS, as a VA contractor, of their responsibility to conduct themselves with the highest degree of integrity and honesty.

Comments: The Principal Deputy Under Secretary for Health will direct the VHA Chief Officer for Procurement and Logistics to make personal contact with the executive leadership of CHS personally and in writing, to remind them of their responsibilities as Government contractors and the rules of conduct that are expected of them in the execution of any current or future contracting activities no later than (NLT) April 30, 2012.

Recommendation 5. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Comments: The Principal Deputy Under Secretary for Health will confer with OHR and OGC to obtain guidance regarding whether administrative action, if any, should be initiated. We will notify OIG by August 15, 2012, about responses from OHR and OGC as well as any actions taken.

Recommendation 6. We recommend that the Principal Deputy Under Secretary for Health ensure that VA sensitive information is properly removed from Ms. Gheen's personal computer and personal email account.

Comments: The Principal Deputy Under Secretary for Health will direct the VHA Acting Chief Business Officer and the appropriate Denver Information Security Office (ISO) to contact Ms. Gheen and arrange to have her personal computer and personal email account inspected for sensitive VA information. The Principal Deputy Under Secretary for Health will ask that the Denver ISO provide certification by April 30, 2012, that they have ensured that any VA sensitive information has been properly removed by April 30, 2012.

Recommendation 7. We recommend that the Principal Deputy Under Secretary for Health confer with OHR and OGC to determine the appropriate administrative action to take against Ms. Gheen and ensure that action is taken.

Comments: The Principal Deputy Under Secretary for Health will confer with OHR and OGC to obtain guidance regarding whether administrative action, if any, should be initiated. We will notify OIG by August 15, 2012, about responses from OHR and OGC and any actions taken.

Appendix B

OIG Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Robert Warren Maureen Regan

Appendix C

Report Distribution

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