

~~FOR OFFICIAL USE ONLY~~

INVESTIGATIONS OF SENIOR OFFICIALS

INSPECTOR GENERAL

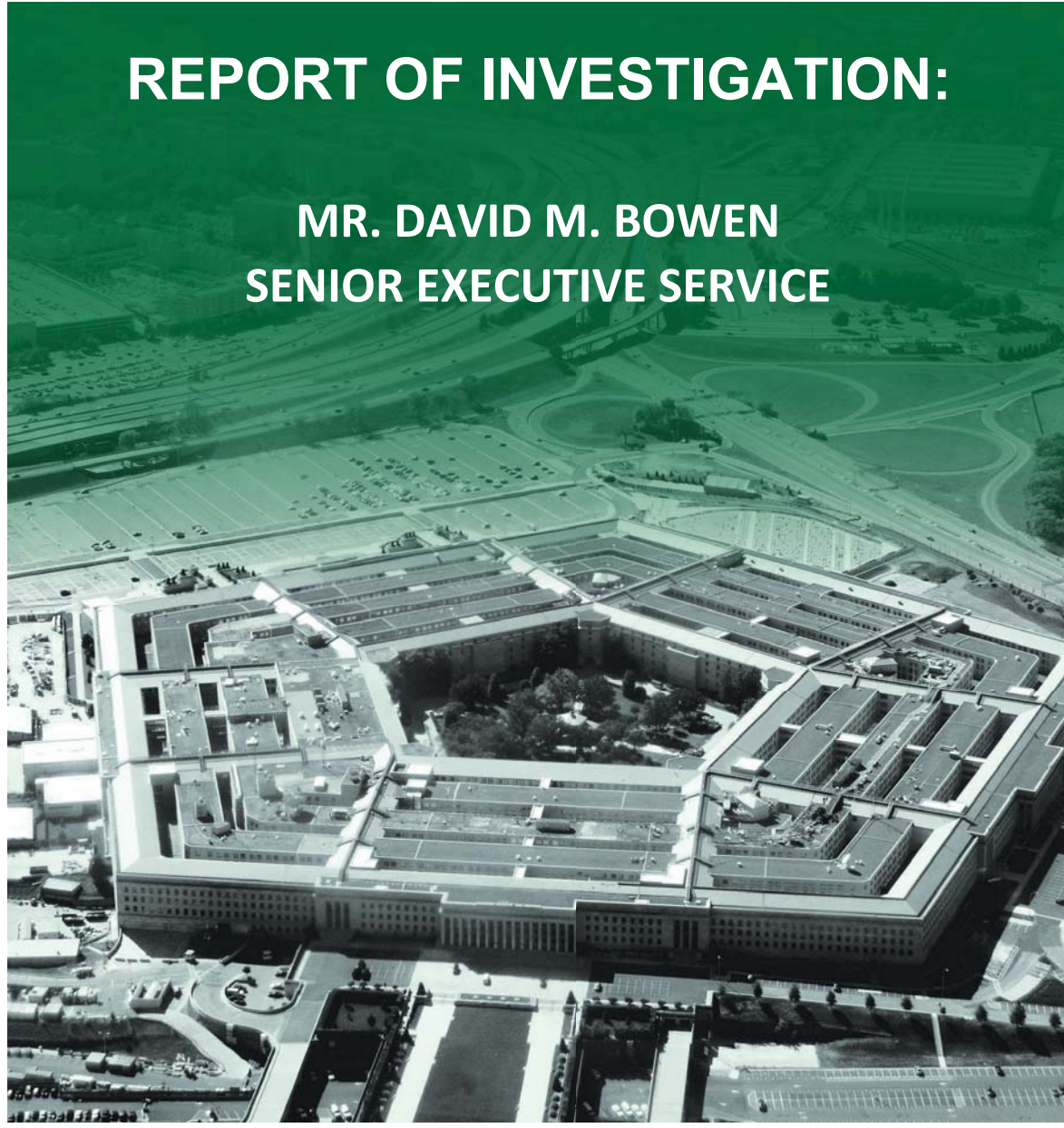
U.S. Department of Defense

April 13, 2016



REPORT OF INVESTIGATION:

MR. DAVID M. BOWEN
SENIOR EXECUTIVE SERVICE



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

The document contains information that may be exempt from
mandatory disclosure under the Freedom of Information Act.

~~FOR OFFICIAL USE ONLY~~



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

APR 13 2016

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Report of Investigation – Mr. David M. Bowen (Case 20140414-024808)

We recently completed an investigation to address allegations that Mr. David M. Bowen, Senior Executive Service, while serving as Chief Information Officer, Military Health Systems, TRICARE Management Activity (TMA), provided a contractor preferential treatment in the award of a Federal contract, and improperly accepted gifts in the form of meals from a prohibited source. Such conduct, if substantiated, would violate the Federal Acquisition Regulation (FAR) and Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)."

We substantiated one allegation. We conclude that Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract. We found that Mr. Bowen contacted a contractor and previous colleague, the (b)(6), (b)(7)(C), IntePros Federal, Inc. (IntePros), regarding his requirement for a new executive assistant (EA). IntePros proposed an individual to Mr. Bowen as a suitable EA candidate and provided Mr. Bowen the individual's resume. On March 1, 2013, Mr. Bowen interviewed the IntePros EA candidate telephonically. On March 8, 2013, Mr. Bowen interviewed the IntePros EA candidate in-person. Mr. Bowen conducted both interviews with the IntePros EA candidate before the TMA Contracting Office solicited contractor proposals for the EA position.

Mr. Bowen knew IntePros sought contract opportunities with TMA and he preferred the EA candidate IntePros proposed to him. Mr. Bowen caused TMA Contracting to cancel the initial MOBIS EA solicitation for which IntePros was not eligible so that IntePros could compete for the EA contract. The FAR prohibited IntePros from being involved in writing the Statement of Work (SOW) and then competing for the requested EA services. Mr. Bowen did not act impartially and gave preference to IntePros when he accepted a SOW from IntePros and tailored it to his preferred candidate's qualifications and resume. Knowing Mr. Bowen's preference, one of Mr. Bowen's subordinates incorporated this tailored SOW into the EA position Performance Work Statement. Finally, Mr. Bowen gave IntePros preferential treatment when he caused the contract solicitation to be conducted under a system (GSA IT Schedule 70) favorable to his pre-determined preferred IntePros candidate, who was not eligible under the initial MOBIS solicitation. Mr. Bowen's actions ensured that his preferred IntePros candidate would be eligible and available for selection.


We did not substantiate the remaining allegation. (b)(6), (b)(7)(C)

[REDACTED]

(b)(6), (b)(7)(C)

In accordance with our established procedure, we provided Mr. Bowen the opportunity to comment on the results of our investigation. In his response, dated March 16, 2016, Mr. Bowen disagreed with our substantiated conclusion, but accepted responsibility for any violations that occurred. After carefully considering Mr. Bowen's response and reviewing the evidence, we stand by our conclusions. The Report of Investigation, together with Mr. Bowen's response, is attached.

Mr. Bowen retired from Government service in January 2016. We will provide a copy of this report to the Assistant Secretary of Defense for Health Affairs, and notify the Director, Office of Personnel Management, of the substantiated allegation.


Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

REPORT OF INVESTIGATION: MR. DAVID M. BOWEN, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Mr. David M. Bowen, Senior Executive Service (SES), while serving as Chief Information Officer (CIO), Military Health Systems (MHS), TRICARE Management Activity (TMA), provided a contractor preferential treatment in the award of a Federal contract, [REDACTED].¹ Such conduct, if substantiated, would violate the Federal Acquisition Regulation (FAR) and Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)."

We substantiated the allegation that Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract.

We found that in February 2013, while serving as CIO MHS/TMA, Mr. Bowen contacted a contractor and previous colleague, [REDACTED] IntePros Federal, Inc. (IntePros), regarding his requirement for a new executive assistant (EA). IntePros did not have a contract with TMA when Mr. Bowen contacted [REDACTED]. [REDACTED] proposed an individual to Mr. Bowen as a suitable EA candidate and provided Mr. Bowen the individual's resume. On March 1, 2013, Mr. Bowen interviewed [REDACTED] proposed EA candidate telephonically. On March 8, 2013, Mr. Bowen interviewed the EA candidate in-person. Mr. Bowen conducted both interviews with [REDACTED] proposed EA candidate before the TMA Contracting Office solicited contractor proposals for the EA position.

(b)(6), (b)(7)(C) informed Mr. Bowen that IntePros was a General Services Agency (GSA) Information Technology (IT) Schedule 70 qualified vendor. IntePros' IT Schedule 70 vendor status meant that it was a GSA-vetted small business IT vendor and qualified contractor under GSA's IT Schedule 70.

On March 14, 2013, Mr. Bowen formally initiated the action to fill the EA requirement through [REDACTED]. [REDACTED] prepared the requisite documentation, including a Performance Work Statement (PWS) with Mr. Bowen's EA requirements and sent the documents to TMA Contracting. TMA Contracting determined the EA requirement fell under GSA's Mission Oriented Business Integrated Services (MOBIS) schedule. On April 22, 2013, TMA issued the EA solicitation to MOBIS vendors.

Because IntePros was not a qualified MOBIS vendor, it could not respond to the MOBIS EA solicitation. On May 3, 2013, [REDACTED] provided [REDACTED] a white paper titled

¹ (b)(6), (b)(7)(C)

“Statement of Work” (SOW). The SOW white paper highlighted [REDACTED] proposed EA candidate’s capabilities and included IT language to support a GSA IT Schedule 70 solicitation, for which IntePros would be eligible to submit [REDACTED] proposed EA candidate’s resume.

(b)(6), (b)(7)(C) [REDACTED] forwarded the SOW white paper to Mr. Bowen, who edited the SOW to include qualifications similar to those in [REDACTED] proposed EA candidate’s resume. [REDACTED] rewrote the EA PWS using Mr. Bowen’s version of the SOW and submitted the PWS to TMA Contracting. On May 8, 2013, TMA Contracting cancelled the MOBIS EA solicitation based on a conversation the TMA contracting specialist had with Mr. Bowen and [REDACTED]. On May 16, 2013, TMA solicited the revised EA requirement using GSA IT Schedule 70.

On May 31, 2013, the EA solicitation closed, and six vendors, including IntePros, responded with proposals. On June 6, 2013, the CIO Technical Evaluation Board (TEB) evaluated the vendor proposals. The TEB consisted of three subordinates to Mr. Bowen, two of whom knew of his preference for [REDACTED] proposed EA candidate prior to the TEB’s deliberations and shared that preference with the third member. The TEB recommended that TMA Contracting award IntePros the contract. On June 13, 2013, IntePros accepted the contract award.

The JER requires that employees act impartially and not give preferential treatment to any private organization or individual. The FAR requires the Government to conduct business in a completely impartial manner and without preferential treatment. With limited exceptions, the FAR prohibits contractors who prepare or assist in the preparation of a work statement for services from participating in the competition for those services unless a specific exception applies. No exceptions applied to IntePros in this instance.

Mr. Bowen knew IntePros sought contract opportunities with TMA and he preferred the EA candidate IntePros proposed to him. Mr. Bowen caused TMA Contracting to cancel the initial MOBIS EA solicitation for which IntePros was not eligible so that IntePros could compete for the EA contract. The FAR prohibited IntePros from being involved in writing the SOW and then competing for the requested EA services. Mr. Bowen did not act impartially and gave preference to IntePros when he accepted a SOW from IntePros and tailored it to his preferred candidate’s qualifications and resume. Knowing Mr. Bowen’s preference, [REDACTED] incorporated this tailored SOW into the EA position Performance Work Statement. Finally, Mr. Bowen gave IntePros preferential treatment when he caused the contract solicitation to be conducted under a system (GSA IT Schedule 70) favorable to his pre-determined preferred IntePros candidate, who was not eligible under the initial MOBIS solicitation. Mr. Bowen’s actions ensured that his preferred IntePros candidate would be eligible and available for selection. Accordingly, we conclude that Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract.

(b)(6), (b)(7)(C) [REDACTED]

(b)(6), (b)(7)(C)

By letter dated January 28, 2016, we provided Mr. Bowen the opportunity to comment on the results of our investigation. In his response, dated March 16, 2016, Mr. Bowen disagreed with our conclusion that he provided a contractor preferential treatment in the award of a Federal contract. Mr. Bowen denied using the IntePros SOW white paper for his revision of the SOW for solicitation under the GSA IT 70 Schedule. Mr. Bowen agreed the revised requirement contained more IT related language for the GSA IT 70 schedule RFP but asserted that 3200 vendors (including IntePros) had the opportunity to respond. Mr. Bowen denied that he influenced or provided direction to the TEB thereby inhibiting a structured and objective evaluation. Mr. Bowen concluded his response by acknowledging responsibility for any violations in the contracting process. After carefully considering Mr. Bowen's response and reviewing the evidence, we stand by our conclusion.²

Mr. Bowen retired from Government service in January 2016. We will provide a copy of this report to the Assistant Secretary of Defense for Health Affairs and notify the Director, Office of Personnel Management, of the substantiated allegation.


This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND


Mr. Bowen served as the CIO, MHS/TMA, from September 2012 until January 2016, when he retired from Government service. As the CIO, Mr. Bowen was responsible for consolidation, reengineering, and standardization of Health Information Technology (HIT) services and the delivery of a single integrated HIT platform in support of an integrated health system. On October 1, 2013, TMA transitioned into the Defense Health Agency (DHA), and Mr. Bowen became dual-hatted as the Director, HIT, DHA and the CIO, MHS. Mr. Bowen was a principal advisor to the Assistant Secretary of Defense for Health Affairs and to DoD medical leaders on all matters regarding medical information management and technology. Previously, Mr. Bowen served in the Federal Aviation Administration (FAA) as the Assistant Administrator, Information Services, and CIO, from 2006 to 2012.

² While we have included what we believe is a reasonable synopsis of Mr. Bowen's response, we recognize that any attempts to summarize risks oversimplification and omission. Accordingly, we incorporated Mr. Bowen's comments where appropriate throughout this report.

(b)(6), (b)(7)(C)




III. SCOPE

We interviewed Mr. Bowen and seven witnesses. The witnesses included a  assigned to the Defense Health Agency. We reviewed over 200,000 official email messages that Mr. Bowen, DHA Contracting and Procurement officials, and contractors sent or received between September 2012 and March 2015. We also reviewed procurement-related documents, contracts, memorandums, and applicable standards.


During our preliminary investigative work, we determined the following issue, which the complaint alleged was an instance of misconduct, did not merit further investigation.

Requests Beyond Scope of Contract


(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)

IV. FINDINGS AND ANALYSIS

A. Did Mr. Bowen provide a contractor preferential treatment in the award of a Federal contract?

Standards

Federal Acquisition Regulation (FAR)

FAR Subpart 3.1, "Safeguards," paragraph 3.101-1, "General" requires government business to be "conducted in a manner above reproach ... with complete impartiality and with preferential treatment for none."

According to the FAR, Subpart 9.5, "Organizational and Consultant Conflicts of Interest," Section 9.505(b), "General Rules," an underlying principle of preventing organizational conflicts of interest in contracting is preventing an unfair competitive advantage.

According to Section 9.505-2, "Preparing specifications or work statements," paragraph (b)(1), a contractor who prepares or assists in preparing a work statement to be used in competitively acquiring services may not then supply the services unless specific exceptions apply. [emphasis added] The applicable exceptions are if it is a sole source contract, the contractor participated in the development and design work, or more than one contractor was involved in preparing the work statement.

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 23, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety. 5 C.F.R. Section 2635.101, "Basic obligation of public service," subparagraph (b)(8) states, "Employees shall act impartially and not give preferential treatment to any private organization or individual." [emphasis added]

Facts

The complaint alleged that a contractor influenced Mr. Bowen in the award of a Federal contract to provide an executive assistant (EA). We reviewed the complaint and framed the allegation to focus on Mr. Bowen's actions and address the question of whether Mr. Bowen afforded IntePros preferential treatment during the process to award a federal contract.

Relationship Between Mr. Bowen and (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified that (b)(6), (b)(7) first met Mr. Bowen in (b)(6), (b)(7)(C). (b)(6), (b)(7) stated that Mr. Bowen had been “a client for years” and that “[h]e’s been a colleague and mentor of mine.” (b)(6), (b)(7) added that Mr. Bowen had educated her on the Federal government and the projects he felt were most in need of contractor support at TMA. (b)(6), (b)(7)(C) testified that when Mr. Bowen joined TMA, “We wanted to learn about the agency. We wanted to get to know his new role, we definitely wanted to work with him again.” (b)(6), (b)(7)(C) stated that in the fall of 2012, IntePros did not have any contracts with TMA. (b)(6), (b)(7) added that IntePros did not enter into a contract with TMA until after (b)(6), (b)(7) departure from IntePros in June 2013.

Mr. Bowen testified that (b)(6), (b)(7)(C) was a friend, whom he met when (b)(6), (b)(7) was working for a contractor doing business with the FAA. He testified, “I saw (b)(6), (b)(7) initially, and then on an ongoing basis, my relationship with (b)(6), (b)(7) got to be that we were friends.” He added, “I’ve been mentoring (b)(6), (b)(7) as (b)(6), (b)(7)(C) transitioned (b)(6), (b)(7) roles and [we] still are active friends.” Mr. Bowen testified that IntePros did not have any contracts with TMA when he began sourcing his EA requirement.

Mr. Bowen Contacts IntePros with his EA Requirement

By email dated February 21, 2013, Mr. Bowen notified (b)(6), (b)(7)(C) that his contractor EA was moving to a new role within the EA’s company. Mr. Bowen wrote, “The resumes we have received from the contractor so far are uninspiring. Would you have a well-qualified executive assistant type person available if we could do a deal?” By email, (b)(6), (b)(7)(C) immediately replied (b)(6), (b)(7) “would love to help” and requested details of the EA’s duties. Mr. Bowen replied via email with a list of EA duties he described as “the standard Exec Assistant stuff.”

The DCIO testified that Mr. Bowen, during his tenure at the FAA, had a type of administrative assistant not on contract with TMA. (b)(6), (b)(7) stated Mr. Bowen’s transition experience at the FAA was similar to what was occurring at TMA with the transition to the Defense Health Agency. The DCIO testified, “... that made the change in the type of administrative assistant he wanted to have in the office as opposed to what we had in the past.” (b)(6), (b)(7) testified, “[Mr. Bowen] wanted more activity done on research, creating White Papers, creating those kind of upper level management documents that the administrative assistants that we currently have did not do.”

(b)(6), (b)(7)(C) testified, “[Mr. Bowen] was inquiring about getting another executive assistant that could do more than just answer the phone and schedule meetings, someone who had technical writing experience that could do briefings and issue papers and other writings that he would need as CIO.” (b)(6), (b)(7) stated that Mr. Bowen’s EA at the FAA had broader experience and Mr. Bowen was used to having an EA that could write for him.

(b)(6), (b)(7)(C) testified that (b)(6), (b)(7) had been trying to find an IntePros contract opportunity with TMA. (b)(6), (b)(7) stated, “I told [Mr. Bowen] if there was anything that looked like it would be viable for a small business, we would be very interested in helping him.” (b)(6), (b)(7) stated that the EA

position would be an ideal entrance into an agency for a small business. (b)(6), (b)(7) stated that IntePros intended to recruit based on Mr. Bowen's specifications.

Mr. Bowen testified that he "had extensive discussions with (b)(6), (b)(7)(C) as well as (b)(6), (b)(7)(C)" regarding efforts to acquire an EA. He also spoke with TMA contracting about his desire to fill the EA position. Mr. Bowen testified that he called (b)(6), (b)(7)(C) because:

(b)(6), (b)(7) had provided us with very good resources at the FAA and was a small business, which is what we're encouraged to deal with when we do these things, and so I was looking at her as a potential source of resources that could help us out.

By email dated February 25, 2013, (b)(6), (b)(7)(C) advised Mr. Bowen, "Enclosed is the resume of [candidate] for Executive Assistant – TriCare." (b)(6), (b)(7)(C) informed Mr. Bowen that the EA candidate was (b)(6), (b)(7)(C) and was considering a move into Federal employment. (b)(6), (b)(7) explained that the candidate had prior experience as a (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified that she spoke with the (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), and the (b)(6), (b)(7)(C) about filling Mr. Bowen's EA requirement. She testified that (b)(6), (b)(7)(C) told her that Mr. Bowen's requirement was not in the scope of work for current administrative assistants. The (b)(6), (b)(7)(C) added, "[s]o we had to go with a new contract." The (b)(6), (b)(7)(C) recalled seeing the IntePros EA candidate resume (b)(6), (b)(7)(C) provided to Mr. Bowen. The (b)(6), (b)(7)(C) could not recall whether she saw the resume as part of the vendor's response to the TMA solicitation or prior to the vendor's response.

When asked what other companies he contacted regarding his EA requirement, Mr. Bowen testified, (b)(6), (b)(7)(C), I think, were talking to a number of companies." He added, "I [also] talked to a company that had a ... contract here ... about what they could do for us." Mr. Bowen stated he then left it to the (b)(6), (b)(7)(C) to determine the best way to get a new contract.

Mr. Bowen testified, (b)(6), (b)(7)(C) supplied us with the resume of an individual that we looked at and thought that it [was] potentially a person that could meet our requirement." Mr. Bowen added that he contacted (b)(6), (b)(7)(C) "because I was aware of the abilities of (b)(6), (b)(7)(C) company to supply qualified people."

Mr. Bowen testified that his acquisition strategy in February 2013 was to perform a full and open competition within small businesses and "allow contractors to bid against the requirements." Mr. Bowen characterized his communications with (b)(6), (b)(7)(C) as, "just testing the waters."

Mr. Bowen Interviews EA Candidate by Telephone

By email dated February 28, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that the IntePros EA candidate would be available for a telephone interview any time on March 1, 2013. Later that day, Mr. Bowen instructed (b)(6), (b)(7)(C) to call his office and schedule the telephone call. (b)(6), (b)(7)(C) later replied and confirmed a telephonic interview scheduled for March 1, 2013.

When asked who initiated the interview request, (b)(6), (b)(7)(C) testified, "Mr. Bowen would have asked to interview the person he liked best." When asked if this occurred before IntePros had a contract with TMA, (b)(6), (b)(7)(C) replied, "Oh yeah," adding that Mr. Bowen would not have given IntePros a contract unless he had someone specific he wanted to hire.

By email dated March 1, 2013, at 12:39 p.m., Mr. Bowen informed (b)(6), (b)(7)(C), "This (b)(6), (b)(7) [the IntePros EA candidate] is too good to be true!" and "We set up an interview for next Friday @ 10:30." (b)(6), (b)(7)(C) immediately replied via email, "Any word on your end on how I would best work with TriCare if you decide you like (b)(6), (b)(7)(C) Mr. Bowen replied via email that he would "follow up with our folks in contracting" and requested that (b)(6), (b)(7)(C) send him IntePros's contract vehicles. (b)(6), (b)(7)(C) immediately replied via email:

There are several ways you can work with us:

1. Direct task order because I am SDVOSB [Service Disabled Veteran Owned Small Business]
2. Direct with me through the [General Services Agency] GSA schedule
3. (b)(6), (b)(7)(C) company is a prime on CIOSP3 which is a contract vehicle that TriCare uses and they have told me I can be a sub under them.³

(b)(6), (b)(7)(C), (b)(6), (b)(7)(C), testified that the CIOSP3 is a contracting vehicle used by the National Institute for Health (NIH). He added, "That's a multiple award schedule out of NIH and that is a viable option. But that is an IT-based schedule. This [EA requirement] is not an IT-based position." (b)(6), (b)(7)(C) stated that the TMA Small Business Programs Office reviewed the CIO EA requirement and determined that it was not an IT requirement.

By email dated March 1, 2013, the IntePros EA candidate thanked Mr. Bowen for the telephonic interview and added that (b)(6), (b)(7) enjoyed the conversation and thought the position Mr. Bowen described would be a "tremendous opportunity." Mr. Bowen and the EA candidate scheduled an in-person interview for 10:30 a.m. on Friday March 8, 2013.

By email dated March 5, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that IntePros did not have a current contract award through a GSA schedule and that she would need to renew the

³ CIO-SP3 is a Government-Wide Acquisition Contract from the National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC) that can be used by any Federal civilian or DoD agency to fulfill a broad range of mission critical information technology requirements. (nitaac.nih.gov)

IntePros status with GSA after March 27, 2013. (b)(6), (b)(7)(C) wrote that if the EA candidate interviews on March 8, 2013, and “if you wanted (b)(6), (b)(7)(C) then it would be possible (I think) to issue a small task order in the 3 weeks leading up to the 27th, but I think I am cutting it close.”

Mr. Bowen immediately replied, thanking (b)(6), (b)(7)(C) for the information on her GSA status and requesting IntePros’ GSA schedule number. He also wrote, “re the timing, we should have a decision next week and be prepared to move pretty fast. So, I don’t envision that the 27th will be an issue.” By email dated March 6, 2013, (b)(6), (b)(7)(C) provided Mr. Bowen IntePros’ GSA schedule numbers. Later that day, Mr. Bowen thanked (b)(6), (b)(7)(C) for the information and told (b)(6), (b)(7)(C) that he would use the information in conversations with the TMA contracting group.

Mr. Bowen Interviews the IntePros EA Candidate In-Person

On March 8, 2013, Mr. Bowen conducted an in-person interview with the IntePros EA candidate. Mr. Bowen testified, “What I recall was, I had a meet and greet with [the candidate].” He testified, “We commonly ask our contractors what kind of vehicles they are on, whether they have been prequalified or preselected or whatever. That’s not unusual.” Mr. Bowen denied his interview was a selection process, “We were merely talking to a candidate that has been put forth as being representative of a well-qualified candidate.” Mr. Bowen testified that (b)(6), (b)(7)(C) was “just trying to be helpful.” He testified:

I depend on my contracting people to advise me on the proper way to proceed at this point. We have a current contractor that hasn’t produced a satisfactory candidate. We have another contractor that we don’t have a contract with producing a satisfactory candidate. So at this point, what I need to do, and what I did was talk to my deputy, talk to our contracting resource officer and say, okay, what are the appropriate contracting steps to take here?

Mr. Bowen Initiates Procurement Actions

By email dated March 11, 2013, at 8:45 a.m., Mr. Bowen requested that (b)(6), (b)(7)(C), schedule an appointment with him to discuss some contracting actions. Mr. Bowen added, “We’re on a short timeframe.” Mr. Bowen scheduled the meeting for 10:30 a.m. on Thursday, March 14, 2013.

By email dated March 11, 2013, at 1:31 p.m., (b)(6), (b)(7)(C) wrote Mr. Bowen that (b)(6), (b)(7)(C) was “glad that things went well on Friday; our candidate is very excited and if offered the position (b)(6), (b)(7)(C) has verbally given us (b)(6), (b)(7)(C) commitment.” Mr. Bowen immediately replied and told (b)(6), (b)(7)(C) that the IntePros EA candidate was impressive. He informed (b)(6), (b)(7)(C) “We are working internally to see what our contracting and financial options are ... Meetings are scheduled this week to do this, as I am mindful of the timing of your GSA schedule.”

Mr. Bowen’s March 14, 2013, daily calendar indicated a 30-minute “Contract Support for Exec Assistant” meeting in his office. Required attendees were Mr. Bowen, the (b)(6), (b)(7)(C),

(b)(6), (b)(7)(C), and the (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) Optional attendees to the meeting were a PSB Program Analyst and (b)(6), (b)(7)(C).

Mr. Bowen testified that the meeting was to present his EA requirement and the CIO capability to fund the requirement. Mr. Bowen testified, "This was sort of a meet and greet, here is what we want to do. Here are the resources that can help you." He stated that the meeting was to lay out what he wanted regarding an EA, bring in contracting, and ask PSB's assistance in drafting an appropriate contracting strategy. Mr. Bowen testified that he told the contracting representatives "that we had talked to another representative contractor that may have a potential candidate, but we were looking for them to tell us what was the proper contracting strategy in this situation and help us execute it."

TMA Contracting Concerns Regarding Mr. Bowen's Actions

By email dated March 14, 2013, at 11:12 a.m., (b)(6), (b)(7)(C) notified (b)(6), (b)(7)(C) about (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) wrote:

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified that (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) explained that she told Mr. Bowen during the meeting that he needed to write the performance work statement (PWS) for the EA position and provide funding. She further stated to Mr. Bowen that she would send out a request for proposal or refer to the GSA MOBIS schedule, and "every vendor there who has the capability of providing that service can submit a proposal." (b)(6), (b)(7)(C) testified that Mr. Bowen replied, "Well, I didn't know that." She testified, "I told him this is the way we have to do it."

(b)(6), (b)(7)(C) testified that (b)(6), (b)(7)(C) was concerned Mr. Bowen interviewed a support contractor. She testified, "[Mr. Bowen] shouldn't be interviewing people at all." She stated that it was the contractor's responsibility to interview candidates for a position. (b)(6), (b)(7)(C) testified that Mr. Bowen asked her to assemble the package to obtain the EA support. She stated

that she needed the requirement; “the specific responsibilities that he would need.” (b)(6), (b)(7)(C) believed the EA requirement for someone with higher than a bachelor’s degree was unusual.

(b)(6), (b)(7)(C) testified that (b)(6), (b)(7)(C) told PSB about Mr. Bowen’s preference to hire the proposed IntePros candidate. He testified, (b)(6), (b)(7)(C) told them [PSB] that they [OCIO] wanted this one person with these special qualifications. And they [OCIO] knew from the start you couldn’t run a fair competition with that.” (b)(6), (b)(7)(C) testified that Mr. Bowen “was not within his [Mr. Bowen’s] realm of capability” when he contacted (b)(6), (b)(7)(C) with his EA requirement.

By email dated April 3, 2013, (b)(6), (b)(7)(C) requested from (b)(6), (b)(7)(C) an update on the EA requirement for Mr. Bowen. She wrote:

I have a call with Mr. Bowen today and I am not sure where we currently sit and I didn’t want to give him poor information in my update. They had wanted to [sic] candidate to start work on or before the 15th and I am not sure if this is going to be a direct award with SDVOSB or go through the GSA schedule. Have you found anything out?

By email dated April 5, 2013, with a courtesy-copy to (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) “... if a decision has been made as to whether this [CIO EA Support Contract] can be procured” through an SDVOSB award. By email later that day, with a courtesy copy to Mr. Bowen, (b)(6), (b)(7)(C) advised (b)(6), (b)(7)(C) that the requirements for the OCIO EA “are not unique to this one individual or company, therefore, I have to do a competition among the schedule they are one [sic], GSA IT-70.” (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) of the 30-day solicitation requirement. He clarified, “If we post it for less than 30 days, and we only receive one proposal, then we have to re-post it for 30 days, in accordance with the regulations.”

By email dated April 5, 2013, (b)(6), (b)(7)(C) forwarded the April 3, 2013, email from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C) in response to (b)(6), (b)(7)(C) earlier question of whether the TMA CIO is targeting a particular SDVOSB to fulfill their EA requirement. (b)(6), (b)(7)(C) wrote, “They are targeting IntePros Federal.” (b)(6), (b)(7)(C) immediately replied by email to (b)(6), (b)(7)(C) and wrote, “Please don’t respond to this person (b)(6), (b)(7)(C) anymore on the status of the requirement, refer her to me.”

(b)(6), (b)(7)(C) testified that she became involved when the contracting officer requested her advice during coordination with the Small Business Programs Office. She stated that she needed to concur or non-concur on the acquisition strategy of using an SDVOSB. (b)(6), (b)(7)(C) testified about her email to (b)(6), (b)(7)(C) “I thought that referring ... having (b)(6), (b)(7)(C) come to me, I could kind of relieve (b)(6), (b)(7)(C) from having to deal with a company that was ... just looking for an opportunity.”

By email dated April 5, 2013, Mr. Bowen informed (b)(6), (b)(7)(C) of the determination the EA contract would be competed with a 30-day solicitation period. He also wrote:

I apologize for the difficulty that this has caused and may cause in the future, however that's government contracting. If I can help you hold onto [EA candidate] for that time, let me know. Alternatively, please let me know if she is no longer available and we'll look elsewhere for a permanent resource.

Mr. Bowen testified, (b)(6), (b)(7)(C) had been working hard to see if she would place the [EA candidate] here and I was informing her that at this point our strategy was to go full and open and she would be expected to respond along with any other prospective bidder." He stated he was "closing the door" on any further discussions.

By email dated April 8, 2013, (b)(6), (b)(7)(C) advised (b)(6), (b)(7)(C), "I got word from Dave Bowen that you would like to compete this work and not do an SDVOSB set-aside." (b)(6), (b)(7)(C) inquired about the timing of the request for quotes and future contract award. She further wrote, "We are trying very hard to keep the candidate that Mr. Bowen feels can best complete the mission and all information is valuable."


(b)(6), (b)(7)(C) immediately forwarded (b)(6), (b)(7)(C) email to (b)(6), (b)(7)(C) requesting confirmation, "I don't think you wanted me to talk to her anymore, so I will forward all correspondence to you ... right?" (b)(6), (b)(7)(C) immediately replied by email to (b)(6), (b)(7)(C) and wrote, "Yes, and Dave Bowen should not be discussing this matter with her, it is really inappropriate."

(b)(6), (b)(7)(C) testified that she became concerned with the pre-solicitation communication between (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C). She testified, "Generally, you don't have a contractor that involved at that point before the solicitation. I mean, to this degree where they're asking what's happening to the award." She stated it was not necessary for the CIO office to be involved in the "middle of the acquisition process."

(b)(6), (b)(7)(C) testified, "And that's the reason why I'm saying that it's inappropriate for those kinds of conversations because the contracting officer is the agent for anything contractually. So it should all go through the CO [Contracting Officer]." (b)(6), (b)(7)(C) stated that it could give a company an unfair advantage knowing the small business acquisition strategy. She testified that the company may determine a need to "team up with somebody" in order to compete, and they would have that information "up front before the others."

By email dated April 8, 2013, (b)(6), (b)(7)(C) replied to (b)(6), (b)(7)(C), "I was going to forward the below message to (b)(6), (b)(7)(C), but I won't for now. See what you think. I just wanted to document the issue in the event Mr. Bowen complained." (b)(6), (b)(7)(C) wrote:

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified that the email to (b)(6), (b)(7)(C), including the proposed email to (b)(6), (b)(7)(C), was to establish a record of this particular CIO EA services procurement. She testified, “[Any] time I had to go against the direction [a] requiring office may have wanted to take, then there were complaints.” (b)(6), (b)(7)(C) testified that in the case of the CIO EA procurement, CIO wanted to set aside the work for an SDVOSB on a sole source basis, but CIO did not have the justification. She testified that the sole source award to IntePros was unsupported by market research, that there were many sources to do this work, and that competition was the better approach for the acquisition.

By email dated April 11, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that she had spoken with (b)(6), (b)(7)(C), who informed her the EA requirement “... could come out for bid in a couple of weeks but he was not sure.” She wrote, “I do want to make sure I am tracking the steps so it does not come out and we miss seeing it. Wouldn’t that be tragic?” Mr. Bowen replied to (b)(6), (b)(7)(C) that they returned the “details” to the “contracting shop.” He wrote:

Please be assured that we are moving this along from our perspective as fast as we possibly can. For contracting to take “a couple of weeks” to get this out is unacceptable and I will follow up personally. Knowing you as I do, I doubt that you will miss the bid when it comes out.

By email dated April 16, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that the IntePros EA candidate (b)(6), (b)(7)(C) She wrote, “I am feeling a bit nervous in regards to that because I have not seen the work come out for bid and I know the

⁴ The 8(a) Business Development Program is a Small Business Administration-created business assistance program for small disadvantaged businesses. The 8(a) Program offers a broad scope of assistance to firms that are owned and controlled at least 51 percent by socially and economically disadvantaged individuals. Participants can receive sole-source contracts, up to a ceiling of \$4 million for goods and services and \$6.5 million for manufacturing. 8(a) firms are also able to form joint ventures and teams to bid on contracts. IntePros was not an 8a company. (<https://www.sba.gov/content/about-8a-business-development-program>)

fastest I can expect a turnaround is 30 days.” Later that day, Mr. Bowen replied to (b)(6), (b)(7)(C), “By way of follow up, learned that the [Request for Proposals (RFP)] package has been assigned a tracking number in contracting for them to work to get out the door.” He further wrote that he would check “... to see when that might be.”

Initial EA Requirement Solicitation (MOBIS)

By email dated April 22, 2013, TMA Contracting posted the EA support requirement on the GSA eBuy website.⁵ By email dated April 23, 2013, (b)(6), (b)(7)(C) notified (b)(6), (b)(7)(C) that Mr. Bowen had informed her the EA requirement was to be posted, and requested, “Can you let me know where it is coming out so that I can respond?”

By email dated April 24, 2013, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C), “I got a call from Dave Bowen this morning and he said the solicitation had dropped. Can you let me know where it is coming out so that I can respond?” (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), sorry to bother you. I have search [sic] all of my [GSA] schedule 70 and nothing seems to match the position that we have our [EA] candidate slotted for. I am concerned. I have already gotten a call from TriCare’s CIO [Mr. Bowen] making sure I have seen this come out and I cannot confirm with him because I am not sure we are seeing it all.

By email later that morning, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C), “The GSA posting number is RFQ775824, Solicitation number is HT0011-12-T-0009. It posted on GSAebuy [sic] under 874-1 and 874-7.” (b)(6), (b)(7)(C) immediately replied to (b)(6), (b)(7)(C) and requested, “This is on schedule 70, correct? I cannot find it.” The (b)(6), (b)(7)(C) did not reply to (b)(6), (b)(7)(C) email.

By email dated May 1, 2013, (b)(6), (b)(7)(C) provided (b)(6), (b)(7)(C) with questions he had received from three vendors responding to the EA support requirement. He wrote, “I also attached the offerors the solicitation was sent to under MOBIS schedule which this requirement falls under.” A review of vendors showed IntePros Federal was not one of the qualified MOBIS vendors.

By email dated May 3, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that she had requested two vendors to check for “subject [IntePros EA candidate’s] resume” in databases they access.

⁵ The General Services Administration’s (GSA) eBuy website is an electronic Request for Quote (RFQ) / Request for Proposal (RFP) system designed to allow government buyers to request information, find sources, and prepare RFQs/RFPs, online, for services and products offered through GSA’s Multiple Award Schedule and GSA Technology Contracts. Government buyers can use eBuy to obtain quotes or proposals for services, large quantity purchases, big ticket items, and purchases with complex requirements.

She wrote, "Neither could locate the resume." She also wrote, (b)(6), (b)(7)(C) has contacted me and is to prove [sic] a white paper with more IT related language for discussed duties/responsibilities. Once I receive, I will discuss again with (b)(6), (b)(7)(C), CO to see if this can go GSA Schedule 70."

SOW White Paper and MOBIS Solicitation Cancellation

By email dated May 3, 2013, (b)(6), (b)(7)(C) provided an EA white paper containing the EA's functional responsibilities. Later that day, (b)(6), (b)(7)(C) forwarded the white paper email and attachment to Mr. Bowen and (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) wrote, "This is much different than my understanding of the requirement. Please confirm this is what the intent of the position is and we will rework the PWS and present to COD again." Later that same day, Mr. Bowen replied via email to (b)(6), (b)(7)(C) and wrote, "Try the attached [white paper], I changed it a bit but kept most of the IT stuff in." Mr. Bowen also wrote that the DCIO had seen and approved his changes to the white paper.

(b)(6), (b)(7)(C) testified that she wrote the PWS using the tasks in the white paper Mr. Bowen had edited. She testified, (b)(6), (b)(7)(C) sent information that would be incorporated into a procurement package." She stated that it was not normal for her to receive a SOW white paper from a contractor. (b)(6), (b)(7)(C) testified, "We put together a statement of work, sent it forward to the contracting office."

(b)(6), (b)(7)(C) testified that it was not normal for (b)(6), (b)(7)(C) to get a white paper from a contractor like (b)(6), (b)(7)(C). He testified, "This should come to the procurement office." (b)(6), (b)(7)(C) testified, "If you read this [white paper] ... this is nothing in his [Mr. Bowen's] original thing of requirements. This is something he [Mr. Bowen] made ... they fabricated to get someone more advanced."

The (b)(6), (b)(7)(C) testified that she did not know why (b)(6), (b)(7)(C) sent the white paper to (b)(6), (b)(7)(C), but the white paper was just more "detailed" about Mr. Bowen's EA requirement. She testified, "I probably didn't pick up on the fact that (b)(6), (b)(7)(C) was working for a contractor because I probably did not read it in detail ... it looks like what [Mr. Bowen] was looking for." She stated that she probably did not register the fact that the white paper came from a contractor.

Mr. Bowen testified that he did not know why (b)(6), (b)(7)(C) provided a white paper to (b)(6), (b)(7)(C). He testified, "I don't know what the PWS, the original requirements were doing. Maybe we felt that this was a better description of what we were looking for than what was in the PWS." Regarding his edits to the white paper provided by (b)(6), (b)(7)(C), Mr. Bowen stated that he added more analytical capabilities to the PWS.

By email dated May 6, 2013, (b)(6), (b)(7)(C) wrote (b)(6), (b)(7)(C), "Per discussion directly with Mr. Bowen on Friday, I have a new perspective on the support he is seeking. Please review the attached description and advise if this would fit as a Set-Aside for Small Business GSA IT Schedule 70."

By email dated May 6, 2013, an Acquisition Analyst informed (b)(6), (b)(7)(C) that OCIO had “requested fair opportunity on IT 70 ... not MOBIS” for CIO’s EA support requirement. (b)(6), (b)(7)(C) immediately replied, “[Contract Operations Division] determined it was not an IT requirement but a Program Management action so [it] went to MOBIS.”

By email dated May 7, 2013, (b)(6), (b)(7)(C) informed Mr. Bowen that the revised EA requirement met the justification for competition on the GSA IT Schedule 70 instead of MOBIS. She wrote, “I looked up the list of vendors and there are 3,245 vendors who qualify as Small Business. The suggested vendor [IntePros] is on the list.” (b)(6), (b)(7)(C) wrote:

Our options now are:

- 1 - re-write the requirement [sic] staying in the IT Schedule 70, SIN #132-51 and compete the action Small Business with RFQ out for 30 days.
 - 2 - re-write the requirement [sic] staying in the IT Schedule 70, SIN #132-51 and complete [sic] Small Business with RFQ out for less than 30 days (the risk here is if we don’t get 3 proposals, the RFQ will have to go back out for 30 days)
 - 3 - continue with current RFQ out on the MOBIS schedule.
- Your thoughts to proceed please?

By email dated May 8, 2013, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C), “Per our meeting earlier today, the solicitation is cancelled and posting confirmation is attached.” The attached documentation indicated the cancellation of MOBIS RFQ 775824 Executive Administrative Support.

By email dated May 8, 2013, (b)(6), (b)(7)(C) informed the Procurement Support Branch that, “upon further consideration of support services required in the TMA Office of the Chief Information Officer, we respectfully request the cancellation of RFQ 775824 Executive Administrative Support and request [Purchase Order] 5072 be reassigned to the attached CIO Technical Support requirement.”

Solicitation for EA Services on GSA IT Schedule 70

By email dated May 15, 2013, (b)(6), (b)(7)(C) notified the other TEB members, “We found out that the [EA] solicitation had been posted on the GSA MOBIS schedule and not the GSA IT 70 Schedule.” She informed the members of the MOBIS RFQ cancellation and that she had “re-worked the package to read information technology analyst versus program/executive administrative support.” (b)(6), (b)(7)(C) added that the new Schedule 70 solicitation would be out for 2 weeks with proposals due May 30, 2013.

By email dated May 16, 2013, the Contract Specialist notified (b)(6), (b)(7)(C) that the Information Technology Analyst requirement had posted on the GSA eBuy website. Later that day, (b)(6), (b)(7)(C) notified Mr. Bowen and the DCIO that “the RFQ has been posted.” By email that same day, (b)(6), (b)(7)(C) also notified (b)(6), (b)(7)(C) of the solicitation number.

TEB Activities and Contract Award to IntePros Federal

Mr. Bowen testified that the EA would be partially working for the (b)(6), (b)(7)(C) so there was interest on the (b)(6), (b)(7)(C) part to be on the TEB. He testified, (b)(6), (b)(7)(C) is our (b)(6), (b)(7)(C) so I assume it would be natural for her to be on the committee.” He stated the third member was with the Communications Department and would be the subject matter expert examining the EA candidate’s communication qualifications.

By email dated May 31, 2013, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) and the third TEB member that “the solicitation is closed and we received 6 proposals.” IntePros was one of the six vendors to submit a proposal. Each vendor proposal included one or two resumes for potential candidates. IntePros submitted the resume of (b)(6), (b)(7)(C) proposed EA candidate, whom Mr. Bowen had previously interviewed. By email dated June 3, 2013, (b)(6), (b)(7)(C) provided each TEB member with the six vendor proposals for the Information Technology Analyst requirement.

The (b)(6), (b)(7)(C) confirmed that she was one of three CIO members on the TEB. She testified that her discussions with Mr. Bowen during the evaluation period were limited to confirmation that she had received responses to the EA solicitation and that IntePros had submitted a response to the solicitation. The (b)(6), (b)(7)(C) testified that she did not have any discussions about IntePros with Mr. Bowen during the evaluation process. Regarding the TEB procedures, the (b)(6), (b)(7)(C) testified that the TEB members individually examined the EA candidate proposals, “We did not meet in any room or discuss them.” She stated that the process was electronic, and they submitted their evaluations separately.

The (b)(6), (b)(7)(C) testified that Mr. Bowen’s preference for a selection was that he wanted a candidate who met his requirements. With regard to the CIO receiving a suggested EA SOW from IntePros prior to the EA solicitation, the (b)(6), (b)(7)(C) stated that the only advantage that “I can see that [IntePros] would have had is ... if they had somebody onboard who already met all of those requirements.”

(b)(6), (b)(7)(C) testified that she did not have any communication with Mr. Bowen during the TEB’s evaluation of proposals. She stated that each member performed individual evaluations of the proposals using a template to note strengths and weaknesses. She testified, “Then we come together as a panel, discuss each of our individual ratings, and then create a consensus.” (b)(6), (b)(7)(C) testified that she knew Mr Bowen preferred IntePros based upon their interactions and emails. She stated that the TEB discussed Mr. Bowen’s preference for IntePros during the portion of the evaluation when they came together for consensus.

(b)(6), (b)(7)(C) testified that she and the (b)(6), (b)(7)(C) made comments to the third member of the TEB making him aware that IntePros had provided input to the SOW. She testified, “I don’t remember specifically but I think we did let him [the third TEB member] know that IntePros had provided some input into this PWS.” She stated that the TEB performed “a fair assessment of the proposals.” She stated that the panel found out the EA candidate Mr. Bowen interviewed was IntePros’s proposed candidate for the EA position when the EA candidate’s resume was included in the proposal package.

By email dated June 7, 2013, (b)(6), (b)(7)(C) provided the Contract Specialist with the TEB Consensus Report and recommendation for contract award. The consensus report stated that the TEB “confidently recommends” contract award to IntePros because IntePros’s “proposal demonstrates a thorough understanding of the government’s requirements and articulates their commitment to the program.”

By letter dated June 12, 2013, (b)(6), (b)(7)(C) notified IntePros that the government accepted their EA solicitation. On June 13, 2013, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) for IntePros, signed the non-personnel services contract providing executive program/administrative support for Mr. Bowen. On June 17, 2013, the EA candidate started work in the TMA/CIO office.

Mr. Bowen’s Testimony

Mr. Bowen denied that he provided preferential treatment to a contractor. He testified, “The contracting process was full and open, it was competitive, and [I had] no involvement whatsoever in the selection, the evaluation, the formation of the evaluation team or the eventual decision.”

When asked about the appearance of his contacts with a contractor (b)(6), (b)(7)(C) who assisted in writing the SOW for a contract solicitation, Mr. Bowen testified, “How can that be if the selection process is objective, full and open with multiple respondents?” He testified, “If they [the TEB] had come back and said we have a respondent that we feel is more qualified then that’s the process, that’s what we go with.”

When asked about the other five vendors not having the opportunity IntePros had to participate in writing the SOW, Mr. Bowen testified, “But they had the ability to respond to this statement of work and they had equal responsibility to respond to this statement of work.”

Mr. Bowen testified about his relationship with (b)(6), (b)(7)(C) during the solicitation, “I was deliberately trying to be careful not to be too involved with the solicitation once the RFP went out. I was saying ‘Okay, let’s let the contracting process do its job.’” When asked why he did not exhibit that same level of care prior to the EA solicitation, Mr. Bowen testified, “Well, because once the solicitation goes out then ... it’s my understanding you’re, sort of, ‘hands-off’ in terms of people who might be involved in the solicitation.”

Discussion

We found that Mr. Bowen was not impartial in his actions to fill his EA requirement. Mr. Bowen contacted (b)(6), (b)(7)(C), a favored contractor, and interviewed an EA candidate that she proposed to him prior to a formal TMA Contracting solicitation. TMA Contracting determined the EA requirement fell under the GSA MOBIS schedule. (b)(6), (b)(7)(C) company, IntePros, was not a qualified MOBIS vendor and could not respond to the EA solicitation. To remedy this, (b)(6), (b)(7)(C) provided to Mr. Bowen a “Statement of Work” containing IT language which best described her proposed EA candidate’s capabilities and a GSA IT schedule 70

solicitation to which IntePros could respond. Mr. Bowen revised his EA requirement using (b)(6), (b)(7)(C) SOW, enhanced with qualifications similar to those in (b)(6), (b)(7)(C) proposed EA candidate's resume. At Mr. Bowen's direction, TMA Contracting cancelled the MOBIS solicitation and solicited his revised EA requirement on the GSA IT Schedule 70 as IntePros requested. IntePros and five other vendors answered the solicitation. A CIO TEB evaluated the six proposals and recommended that TMA Contracting award IntePros the EA contract. Two of the three TEB members were aware of their supervisor's (Mr. Bowen's) preference for the IntePros EA candidate, and made the third TEB member aware of Mr. Bowen's preference. IntePros accepted the contract award and the IntePros EA candidate, Mr. Bowen interviewed prior to the contact solicitation, reported for work as his EA.

The JER requires that DoD employees act impartially and not give preferential treatment to any private organization or individual. The FAR requires the Government to conduct business in a completely impartial manner and without preferential treatment. With limited exceptions, the FAR prohibits contractors who prepare or assist in the preparation of a work statement for services from participating in the competition for those services unless a specific exception applies. No exceptions applied to IntePros in this instance.

We determined that Mr. Bowen knew that (b)(6), (b)(7)(C) sought IntePros contract opportunities with TMA, and that he preferred the IntePros EA candidate (b)(6), (b)(7)(C) had proposed to him. Mr. Bowen caused TMA Contracting to cancel the initial MOBIS EA solicitation for which IntePros was not eligible so that IntePros could compete for the EA contract. The FAR prohibited IntePros from being involved in writing the SOW and then competing for the requested EA services. Mr. Bowen did not act impartially and gave preference to (b)(6), (b)(7)(C) and IntePros when he accepted a SOW from (b)(6), (b)(7)(C) and tailored it to (b)(6), (b)(7)(C) proposed candidate's qualifications and resume. Knowing Mr. Bowen's preference, (b)(6), (b)(7)(C) incorporated this tailored SOW into the EA position Performance Work Statement. Finally, Mr. Bowen gave IntePros preferential treatment when he caused the contract solicitation to be conducted under a system (GSA IT Schedule 70) favorable to his pre-determined preferred IntePros candidate, who was not eligible under the initial MOBIS solicitation. Mr. Bowen's actions ensured that his preferred IntePros candidate would be eligible and available for selection. Accordingly, we conclude that Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract.

Response to Tentative Conclusion

By letter dated January 28, 2016, we provided Mr. Bowen the opportunity to comment on the results of our investigation. In his response, dated March 16, 2016, Mr. Bowen agreed that he knew that IntePros sought contract opportunities with TMA and that he contacted them regarding his EA requirement. He wrote, "I should not have met with the candidate in advance and would not have done so had I a more thorough understanding of the DoD regulations." Mr. Bowen expressed disappointment in his staff for not wanting to share their concerns that he was acting inappropriately by meeting with the EA Candidate. He wrote, "I was counting on them for guidance and as I always support open discussions with my staff." Mr. Bowen acknowledged that he caused the cancelation of the MOBIS solicitation so that IntePros could

compete on the new solicitation. He explained, "This is true, based on discussions I had with my contracting staff as a way to get the best technically qualified candidate."

Mr. Bowen disagreed that he used IntePros's SOW white paper to alter the SOW and revise the PWS. He wrote, "I distinctly remember receiving the "White Paper" from my contracting staff and realizing that it was done by the vendor, discounted it totally." He stated he based his SOW revision on his requirements and once he finalized the SOW he removed himself from the process. Mr. Bowen wrote, "My actions merely made the solicitation available for IntePros to respond."

We compared the IntePros SOW white paper and the SOW Mr. Bowen provided to (b)(6), (b)(7)(C) to support a new GSA IT 70 schedule solicitation. We found that Mr. Bowen requested the vendor-supplied white paper SOW from (b)(6), (b)(7)(C) and returned a SOW to her that contained more than half of the original vendor-supplied language. We also note that (b)(6), (b)(7)(C) revised SOW contained specific phrases from the IntePros EA candidate's resume. (b)(6), (b)(7)(C) incorporated Mr. Bowen's SOW verbatim into the new PWS used for the GSA IT 70 solicitation. We determined that despite his assertion to the contrary, Mr. Bowen used the vendor's SOW white paper as the basis for his revised SOW that (b)(6), (b)(7)(C) included in the PWS.


In his response, Mr. Bowen also denied that his recommendation that his (b)(6), (b)(7)(C) be a TEB member influenced the TEB's selection process. We re-examined the relevant documentation and found that the (b)(6), (b)(7)(C) provided (b)(6), (b)(7)(C), a TEB member, a copy of the IntePros EA candidate's resume during the writing of the initial PWS submitted for solicitation on April 22, 2013. Mr. Bowen included the (b)(6), (b)(7)(C) as an addressee when he emailed (b)(6), (b)(7)(C) his revision of the vendor-supplied SOW and informed her of the (b)(6), (b)(7)(C) approval of the revised SOW. We stand by our determination that two of the three TEB members were aware of their supervisor's (Mr. Bowen's) preference for the IntePros EA candidate, and those two members made the third TEB member aware of Mr. Bowen's preference.

Mr. Bowen concluded his response by acknowledging responsibility for any violations in the contracting process:


I did some things that I shouldn't have done in going through this process and maybe relied too heavily on my contracts staff who were reluctant to express their concerns. Nonetheless, I take responsibility for any actions that I took that were inappropriate and certainly did not intend to violate DoD contracting rules in any way.

After carefully considering Mr. Bowen's response, we stand by our conclusion that Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract.

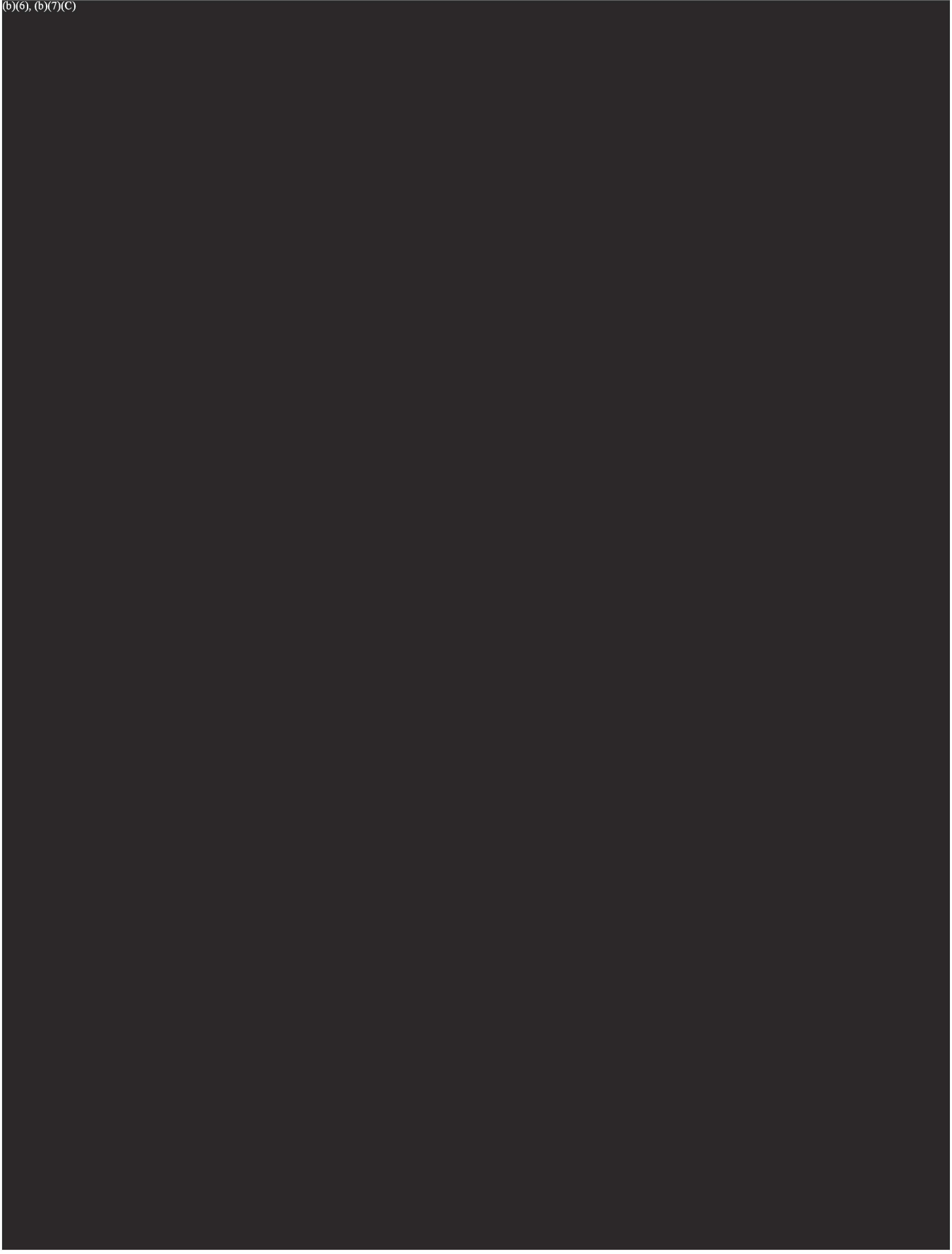
(b)(6), (b)(7)(C)




(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)

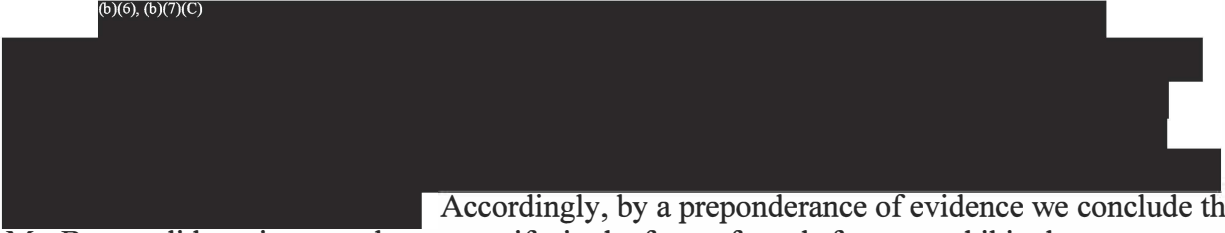


(b)(6), (b)(7)(C)



Discussion

(b)(6), (b)(7)(C)



Accordingly, by a preponderance of evidence we conclude that Mr. Bowen did not improperly accept gifts in the form of meals from a prohibited source.

V. CONCLUSIONS

A. Mr. Bowen provided a contractor preferential treatment in the award of a Federal contract.

B. Mr. Bowen did not accept gifts in the form of meals from a prohibited source.

VI. RECOMMENDATION

A. Provide a copy of this report to the Assistant Secretary of Defense for Health Affairs.

B. Notify the Director, Office of Personnel Management, of the substantiated allegation.

~~FOR OFFICIAL USE ONLY~~

Case 20140414-024808



DEPARTMENT OF DEFENSE | INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, VA 22350-1500
www.dodig.mil
Defense Hotline 1.800.424.9098

~~FOR OFFICIAL USE ONLY~~