



DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**

*Office of Investigations*

OFFICE OF MANAGEMENT

# Alleged Improper Release of Procurement Information

ADMINISTRATIVE  
INVESTIGATION

REPORT #18-02487-95

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## Summary

The VA Office of Inspector General (OIG) received allegations that a current VA employee (VA Employee 1) and the employee's spouse, a former (retired) VA employee (Former VA Employee 1), improperly released VA procurement information. The complainant was an employee of a contractor doing business with VA (Contractor 1). Former VA Employee 1 retired from VA in October 2017 and began working for a small consulting company (Contractor 2). In the fall of 2017, VA issued a Request for Information (RFI) as part of an acquisition process for the VA STOP Fraud, Waste, and Abuse (FWA) initiative.<sup>1</sup> The VA Improper Payments Remediation and Oversight (IPRO) Office developed criteria and ranked plans from 37 respondents to the RFI. Contractor 2 did not respond to the RFI. Former VA Employee 1 allegedly obtained the rankings for the 37 companies and approached at least two responding companies. Former VA Employee 1 then allegedly suggested to those companies that because of his/her knowledge of VA, Contractor 2 was well positioned to partner with them to win future contracts related to the VA STOP FWA initiative. In the meantime, VA senior leaders canceled the acquisition process when they realized other VA offices were pursuing the same goal. The OIG determined that the complainant's information was hearsay and there was no direct evidence. The OIG interviewed the complainant's source and determined that the source's information did not support the allegations raised by the complainant. Because there was insufficient evidence to substantiate the allegations, the identity of VA Employee 1, Former VA Employee 1, and contractors will not be disclosed in this report.

## Introduction and Background

The *Fraud Reduction and Data Analytics Act of 2015* requires federal agencies to establish financial and administrative controls to include (a) evaluating fraud risks and implementing controls to mitigate them, (b) collecting and analyzing data on detected fraud to monitor trends, and (c) using the results of evaluations to improve fraud prevention and detection.

On April 27, 2017, then VA Secretary David Shulkin announced a new initiative to improve VA's efforts to identify and prevent fraud, waste, and abuse branded STOP FWA. The VA Assistant Secretary for Management, through the Office of Finance and the IPRO Office, was tasked with leading the STOP FWA initiative, defining fraud, waste, and abuse as

- **Fraud:** obtaining something of value through willful misrepresentation;

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<sup>1</sup> The Federal Acquisition Regulation, Subpart 15.201, permits RFIs to be used when the government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the government to form a binding contract.

- **Waste:** using or expending resources carelessly, extravagantly, or to no purpose; and
- **Abuse:** behavior that is deficient or improper compared to what a prudent person would consider reasonable, such as misuse of one's position.

VA records also reflected an unsigned letter from Secretary Shulkin addressed to The Honorable Johnny Isakson, Chairman of the Senate Committee on Veterans' Affairs, stating

I am pleased to announce the establishment of the Department of Veterans Affairs (VA) Prevention of Fraud, Waste, and Abuse Advisory Committee (Committee), which will provide advice to the Secretary of Veterans Affairs, through the Acting Assistant Secretary for Management and Acting Chief Financial Officer, Office of Management. The advice will be related to identifying, preventing, and mitigating fraud, waste, and abuse in programs similar to those offered by VA in order to improve the integrity of VA's payments and the efficiency of its programs and activities.

The IPRO Office issued an RFI related to a multistep market research and acquisition process for the STOP FWA initiative. The office received several industry plans and ranked them according to criteria IPRO established.

In early 2018, an employee of one of the submitting companies (Contractor 1) told a VA employee that Former VA Employee 1 disclosed to Contractor 1 the companies' rankings and suggested that Contractor 1's company partner with Former VA Employee 1 to win the award. The OIG learned that the rankings Former VA Employee 1 allegedly provided to Contractor 1 were accurate, but the VA employee did not confirm or deny this information to Contractor 1. The OIG also learned that Contractor 1 informed the VA employee that Former VA Employee 1 approached the employee of another company (Contractor 3) with the same information and proposal.

To assess these allegations, the OIG reviewed email and personnel records, federal laws and regulations, and VA policy. The OIG interviewed VA Employee 1, other VA employees, and contractor employees with relevant knowledge or information. The OIG sought voluntary testimony from Former VA Employee 1, who declined to speak to investigators.

## Relevant Legal Authority

The Federal Acquisition Regulation (FAR) Subpart 2.1, defines market research as "collecting and analyzing information about capabilities within the market to satisfy agency needs." It also states that publishing a formal request for information (RFI) is an appropriate technique for conducting market research.

The FAR, Subpart 15.207, *Handling proposals and information*, states that proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104

regarding the disclosure of source selection information (41 U.S.C. 423).) Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

The FAR, Subpart 3.104-2, states that Parts 14 and 15 of the FAR place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905; release of information both before and after award (see 3.104-4) may be prohibited by the *Privacy Act* (5 U.S.C. 552a), the *Trade Secrets Act* (18 U.S.C. 1905), and other laws; and using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

The FAR, Subpart 3.104-3, *Statutory and related prohibitions, restrictions, and requirements*, states that "a person...must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." (See 3.104-4(a).) This subsection applies to any person who

- Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a federal agency procurement; and
- By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

## Investigative Results and Recommendations

### **Finding: Evidence Did Not Substantiate that VA Employee 1 or Former VA Employee 1 Provided Procurement Information to Contractors**

In the fall of 2017, the IPRO Office issued an RFI to which 37 companies responded. IPRO Office personnel, under the supervisory program manager's direction, developed the evaluation criteria and reviewed and ranked the plans that vendors submitted. VA Employee 1 began overseeing the STOP FWA initiative in December 2017.

VA Employee 1 told the OIG that the IPRO Director stood up the STOP FWA initiative. VA Employee 1 said that by the time he/she was assigned to oversee the IPRO Office, the RFI was issued, responses were received, and the team was "struggling" to figure out what VA was "buying." VA Employee 1 also said that at first, there was a misunderstanding whether the RFI sought an information technology solution or data analytics services. Further, VA Employee 1 said that he/she requested the criteria and vendors ranking list—the information allegedly leaked to contractors—to better understand the progress made on the VA STOP FWA initiative.

In a December 20, 2017, email chain which initially included VA Employee 1, the supervisory program manager, and other VA senior-level personnel (Subject: “STOP FWA”), VA Employee 1 replied only to the supervisory program manager:

Can I get a copy of the spreadsheet with the respondents on it? I’m just trying to understand the criteria. Not that I want to change it – just trying to learn!

The supervisory program manager told the OIG that he/she found it “a little odd” that, in an email chain including other senior leaders and staff, VA Employee 1 only sent the request to the supervisory program manager. Records reflected the supervisory program manager complied with VA Employee 1’s request, but included other VA personnel in his/her response.

Email records reflected in VA Employee 1’s response to the supervisory program manager with others on copy, he/she said

This was very informative. It helped me understand some of the conversations from yesterday’s call as well. And I think we got our guidance from [him/her] that this is not a[n] IT solution we are seeking...

VA Employee 1 told the OIG that the IPRO Director, whose office oversaw the RFI process, had minimum involvement evaluating the vendors’ plans in response to the RFI. VA Employee 1 said that he/she requested the information from the supervisory program manager because the IPRO Director told him/her that the supervisory program manager oversaw the proposal review.

The Associate Deputy Assistant Secretary (ADAS) for Finance told the OIG that he/she did not know to what extent VA Employee 1 was involved with the RFI, stating, “...the bulk of the RFI process was handled by the IPRO Director...and [the ADAS for Finance’s] staff.” The ADAS for Finance said that the “RFI process was mostly finalized by the time [VA Employee 1] became the Program Integrity Office Director,” and he/she did not know what VA Employee 1 needed to know regarding the ranking list of the vendors. However, the ADAS for Finance also said that he/she did not believe it was unusual for VA Employee 1 to request this list given that VA Employee 1 became the director of the office that managed the RFI.

VA Employee 1 told the OIG that “nobody here understood why there was an RFI. It made absolutely no sense...,” and VA Employee 1 elevated concerns to his/her supervisor. Ultimately, Office of Management leaders decided to cancel the RFI and opted to utilize the acquisition vehicle VA’s Financial Center (FSC) had underway. VA Employee 1 said VA did not need to enter into a contract for data analytics because VA had that capability in house, citing the Veterans Benefits Administration, Community Care, and the FSC.

The ADAS for Finance told the OIG that the Office of Finance decided to reevaluate its contract strategy because of shifting management priorities and redundant efforts. Specifically, the FSC was already pursuing a data analytics contract independent of the RFI in question.

Email records confirm that by February 27, 2018, the solicitation had been placed on hold. Multiple VA employees testified that management stopped the RFI and decided to use the same acquisition vehicle that FSC was utilizing for data analytics.

### **VA Employee 1's Conversations with His/Her Spouse**

VA Employee 1 told the OIG that after he/she was assigned the STOP FWA initiative responsibilities, he/she became frustrated with its progress and vented to his/her spouse (Former VA Employee 1). VA Employee 1 said he/she spoke to Former VA Employee 1 about the STOP FWA initiative “mostly in generic terms” like “how to build data analytics models” but nothing that involved contracting. In answering whether Former VA Employee 1 asked VA Employee 1 questions about VA, VA Employee 1 said “he/she [Former VA Employee 1] would often...ask me questions about...[whether] the RFI [was] still moving...” VA Employee 1 also told the OIG that he/she “probably” talked to Former VA Employee 1 “about the different Treasury deliverables...” and that he/she was “sure” he/she told Former VA Employee 1 that the team [referring to VA staff assigned to the effort] did not know if they were “buying IT.”

VA Employee 1 told the OIG that he/she did not share the vendors ranking list with Former VA Employee 1. VA Employee 1 said that he/she teleworks twice a week and stated, “I don’t remember, but I could very well have” brought the list home from one of the meetings. VA Employee 1 also said that Former VA Employee 1 has access to his/her home office.

VA Employee 1 told the OIG that he/she asked one employee who participated in the evaluation of the responses to the RFI if Contractor 2 (his/her spouse’s current employer) submitted a plan, because if they did, VA Employee 1 would have recused himself/herself. Additionally, VA Employee 1 said that when he/she saw the vendors ranking list, Contractor 2 was “definitely not on it” and by the time he/she got involved in the STOP FWA initiative, the date to respond to the RFI had passed.

### **The Source of the Allegations**

To trace the allegations of improperly released VA procurement information to its source, the OIG contacted a senior director of Contractor 1, who brought the allegations to the VA employee’s attention. The senior director told the OIG that the allegations arose from a December 2017 conversation between Former VA Employee 1 and an employee of Contractor 1 (Contractor 1 Employee). When interviewed, Contractor 1 Employee told the OIG he/she met Former VA Employee 1 at least a decade ago and did not maintain frequent communication with Former VA Employee 1. Contractor 1 Employee stated that in late 2017, Former VA Employee 1 called him/her to talk about “[VA STOP FWA] and why Former VA Employee 1 thought that Contractor 2 would be a good teaming partner for” Contractor 1. Contractor 1 Employee said that many companies approached Contractor 1 about partnering. Contractor 1 Employee said that

he/she “didn’t see what Contractor 2 brought to the table...that would make it compelling...to team with them.”

Contractor 1 Employee told the OIG that he/she informed the complainant about his/her conversation with Former VA Employee 1, and that he/she did not “...recall [Former VA Employee 1] sharing a ranking.” Contractor 1 Employee recalled Former VA Employee 1 stating that he/she thought Contractor 1 would be well-positioned for the work due to similar work Contractor 1 was already performing at other federal agencies. Contractor 1 Employee told the OIG that he/she did not recall any disclosure of VA inside information by Former VA Employee 1.

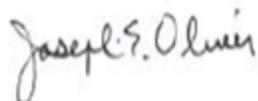
VA Employee 1 testified under oath that he/she did not know that the ranking list was allegedly shared with some of the companies that submitted plans in response the RFI. VA Employee 1 also said that he/she was aware that contractors networked and partnered with each other. Regarding Contractor 2, VA Employee 1 said he/she believed VA met with big companies in an effort to partner, but that Former VA Employee 1 did not tell VA Employee 1 anything specific.

## Conclusion

There was insufficient evidence to substantiate that VA Employee 1 or Former VA Employee 1 released VA procurement information to unauthorized parties. Evidence reflected that VA Employee 1’s request for the vendors ranking list was not outside the parameters of the duties assigned by his/her chain of command. Additionally, VA Employee 1 did not have access to the plans vendors submitted in response to the RFI. Further, email records reflected that a contracting officer informed VA Employee 1 that he/she did not need to sign a nondisclosure agreement during the market research phase of the acquisition process but advised VA Employee 1 to keep the information within the team only.

The allegations came to the OIG through a third party. When the OIG interviewed the source of the allegations, the contractor employee testified that he/she did not recall any disclosure by Former VA Employee 1 of VA inside information. Although the possibility existed that Former VA Employee 1 obtained VA inside information while communicating with his/her spouse (VA Employee 1), the OIG found no evidence indicating that VA Employee 1 intentionally provided VA procurement information to Former VA Employee 1 or Contractor 2 to use as leverage when networking with other contractors.

There was no loss to VA since the acquisition process in question did not result in a request for proposal or an awarded contract. A VA senior manager and other VA employees testified that VA decided to utilize other avenues to continue the STOP FWA initiative. The OIG is therefore closing the investigation into these allegations with this report.



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## OIG Contact and Staff Acknowledgments

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