



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Inspection Report

Allegations of Irregular Hiring Practices
and Preferential Treatment in the Loan
Programs Office

INS-L-13-06

August 2013



Department of Energy
Washington, DC 20585

August 21, 2013

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, LOAN PROGRAMS OFFICE

Sandra D. Bruce

FROM: Sandra D. Bruce
Assistant Inspector General
for Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on "Allegations of Irregular Hiring Practices and Preferential Treatment in the Loan Programs Office"

BACKGROUND

The Department of Energy's (Department) Loan Programs Office (LPO) grants and monitors loans to private sector entities to develop new clean energy technologies. LPO was authorized by the *Energy Policy Act of 2005* with the goal of creating jobs, reducing dependency on foreign oil, improving the Department's environmental legacy, and enhancing American competitiveness in the global economy of the 21st century.

As with most Departmental programs, LPO relies on both Federal and contractor employees to carry out its mission. With the support of the Department's human resources officials, LPO recruits and hires Federal employees. Federal regulations prohibit employees from granting any preference or advantage to applicants for Federal employment, unless specifically prescribed by law. Notably, Title 5 Code of Federal Regulations (CFR) 2635.702, *Use of Public Office for Private Gain*, precludes Federal employees from using public office for the private gain of friends or others with whom the employee is affiliated in a nongovernmental capacity. Further, Title 5 CFR 2635.502, *Personal and Business Relationships*, indicates that a Federal employee's participation in matters involving specific parties could cause a reasonable person to question the impartiality of the Federal employee. Regarding contractor support, with limited exception, Federal employees are prohibited from becoming involved in contractor employee personnel matters. Departmental guidance prohibits such activity and notes that Federal employee involvement in contractor hiring decisions clouds the traditional and appropriate allocation of contract performance and cost risks between the Government and its contractors.

The Office of Inspector General received a complaint alleging that a senior LPO official: (1) hired a "friend" for a Federal program position; and (2) directed a contractor to hire six individuals. We initiated this inspection to examine the facts and circumstances surrounding these allegations.

RESULTS OF INSPECTION

Our inspection identified actions taken by a senior LPO official that could have caused others to perceive a misuse of position. Specifically, we substantiated the allegation that the senior LPO official hired a "friend" for a Federal position. Regarding the second allegation related to directed contractor hiring, we found that the senior LPO official had, in fact, not only referred six individuals, but actually referred a total of 10 individuals with whom the official was affiliated, to a support service contractor for hiring consideration. However, we did not substantiate the allegation that the official actually directed the hiring of the referred individuals. Nonetheless, the actions by the senior LPO official could have created the appearance that the official was inappropriately involved in the contractor's hiring process.

To ensure a commitment to the letter and spirit of current policies, in our view, it would have been in the best interest of the LPO official to have: (1) taken recusal actions with regard to the hiring of a friend for a Federal position; and (2) taken steps to demonstrate that special care was exercised in maintaining an arm's-length relationship with the contractor regarding its hiring decisions.

Participation in a Federal Personnel Selection

We substantiated the allegation that a senior LPO official hired a "friend" for a Federal position. The senior LPO official acknowledged relying on personal knowledge of the individual's prior work experience when making the final selection. While the senior LPO official told us that the selection was based on merit alone, the official conceded that there had been a longstanding personal relationship with the successful applicant. The official also indicated that another individual had been hired for the same type of position at the same time, and that full consideration was given to all applicants. The senior official pointed out, and we verified, that both of the individuals selected possessed the basic qualifications for the position as specified in the vacancy announcement and had been properly referred for consideration by human resources officials.

The circumstances surrounding the individual's selection may have been influenced, at least in part, by the senior LPO official's prior relationship and past experience. We were unable to specifically determine whether that was the case and whether the senior LPO official fully considered other qualified applicants, because no candidate evaluation records existed for this particular hiring action.

The senior LPO official, as well as other senior LPO managers and employees, explained the difficulties they had in hiring individuals, particularly those with specific, technical loan program related expertise. LPO officials also informed us that they recognized potential weaknesses in their hiring process. Officials told us that in an October 2011 memorandum to the Office of the Chief Human Capital Officer, LPO changed policies and procedures so that all personnel actions, including hiring selections were to be approved by the Director of Strategic Initiatives or the Deputy Director. As such, individuals in the same position as the subject of the complaint no longer have the individual authority to act as the selecting officials in hiring decisions.

Furthermore, in December 2012, those same policy changes regarding LPO's hiring authorities were reinforced by LPO's Deputy Director in another memorandum to the Office of the Chief Human Capital Officer.

Involvement in Contractor Personnel Selections

The allegation that a senior LPO official directed a contractor to hire specific applicants was not substantiated. However, we determined that the senior LPO official actively participated in the receipt and review of resumes for contractor applicants. The senior official then forwarded the resumes and/or names of 10 individuals to an LPO support services contractor for hiring consideration. A contractor management official informed us that all of those individuals were referred by the senior LPO official and were subsequently hired as contractor employees.

The Department's Office of Procurement and Assistance Management issued Policy Flash 2011-23, and added Chapter 37.114, *Federal and Contractor Roles in the Federal Workplace*, to the Department's Acquisition Guide in December 2010. According to the policy guidelines, Federal employees generally should not be involved in contractor personnel decisions. The guidelines note that Federal employee involvement in contractor hiring decisions clouds the traditional and appropriate allocation of contract performance and cost risks between the Government and the contractor. The guidelines also indicate that, in rare cases, Federal involvement may be necessary when there is a pressing Federal interest in the contractor's selection of certain employees due to the nature of the services or supplies being procured. However, in those instances, the risks of violating prohibitions regarding personal services or inherently governmental functions must be explicitly acknowledged. Although the guidelines prohibited a Federal manager from directing a contractor to hire a particular individual, Federal managers are allowed to provide a contractor with names of competent individuals.

We determined that the senior LPO official actively forwarded resumes or referred names of the applicants with whom the official had an affiliation. The official told us that the individuals were referred because they appeared to possess the qualifications to fill support service contractor positions for which the LPO had an urgent need and not because of personal connections. When interviewed, the contractor stated that the senior LPO official referred all 10 applicants for employment consideration and that they were subsequently hired. Also, during interviews we learned that seven applicants provided their resume to the senior LPO official and the remaining three applicants were advised by the senior LPO official to contact the contractor directly. The senior LPO official acknowledged screening applicants' resumes and, in some cases, conducting preliminary phone and in person interviews of certain applicants prior to referring specific resumes to the contractor for employment consideration. During our interview, the senior LPO official recalled forwarding four applicants' resumes to the contractor while advising three applicants to contact the contractor by phone and the other three to visit the company's website.

The senior LPO official denied that the contractor was directed to hire the referred individuals. Similarly, the contractor informed us that each applicant was competitively screened. He also asserted that the senior LPO official informed him that he was not obligated to hire the 10 applicants. Therefore, the contractor manager said that he did not feel pressured to hire those

individuals. The contractor told us that when the senior LPO official referred individuals the official would state, "Here's a resume that might be a good fit for a position you are trying to fill." The contractor also mentioned that the resumes were generally passed by hand or emailed by the senior LPO official. Finally, the contractor explained that there was no direction to hire any of those individuals and as such there was no obligation to hire. We noted that 9 of the 10 applicants were hired by the LPO contractor for technical positions, and the remaining individual was hired by the LPO contractor to serve as the senior LPO official's executive assistant.

Action Taken and Path Forward

We noted that the LPO officials took certain actions to strengthen its hiring processes, including establishing interview panels and limiting hiring authorities to a select few LPO managers, which excluded the senior official and other LPO officials. Further, LPO officials informed us that they disseminated the Office of Inspector General's report on *Review of Allegations Regarding Hiring and Contracting in the Office of Energy, Efficiency and Renewable Energy* (OAS-SR-10-04, September 2010) to remind staff of their roles and responsibilities regarding their involvement with the hiring of Federal and contractor personnel.

The appearance of favoritism in the Federal hiring process and active involvement in the contractor staffing process could erode the public trust in the hiring process and could damage the relationship between the Department and its contractors. Because the senior LPO official's actions could have caused others to perceive that Federal and contractor hiring was influenced, we believe continued vigilance in this area is warranted. In particular, we suggest that steps be taken to ensure strict compliance with Federal ethical standards and Department published guidance on Federal officials' involvement in Federal and contractor hiring decisions.

SUGGESTED ACTIONS

To help prevent the recurrence of the issues we observed, we suggest that the Loan Programs Office (LPO), in coordination with the General Counsel:

1. Determine whether the senior LPO official violated the standards of ethical conduct or engaged in irregular hiring practices and take necessary action.

Further, we suggest that the Loan Programs Office:

2. Conduct training to ensure that LPO officials clearly understand and adhere to Federal hiring regulations and prohibited personnel practices.

Attachment

cc: Deputy Secretary
Chief of Staff
General Counsel
Chief Human Capital Officer

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of this inspection was to examine the facts and circumstances surrounding alleged hiring practice irregularities within the Loan Programs Office (LPO). Specifically, it was alleged that a senior LPO official hired a friend for a Federal Program position, and, directed a contractor to hire six individuals as contractors.

SCOPE

This allegation-based inspection was conducted from July 2012 to August 2013, at the Department of Energy (Department) Headquarters in Washington, DC.

METHODOLOGY

To accomplish the inspection objective, we:

- Reviewed and analyzed Federal and Department hiring regulations as well as LPO contractual, organizational and personnel documentation; and
- Interviewed officials from LPO, including Federal and contractor employees, the Office of the Chief Human Capital Officer, Office of the General Counsel and the Office of Headquarters Procurement Services.

We conducted this allegation-based inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection.

We held an exit conference with LPO officials on Monday, August 12, 2013.

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