



INVESTIGATIVE REPORT

U.S. Census Bureau

Review of Sole Source Award for
Executive Search Services

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*COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934*

Chapter I: Introduction and Overview

I. Introduction and Executive Summary

On March 3, 2014, the Office of Inspector General (OIG) of the United States Department of Commerce was contacted by a recruiting firm (Complainant), which alleged that the Census Bureau (Census) had improperly circumvented competition by awarding a sole source contract to a firm for executive search services. The Complainant asserted that the sole source award and justification in support of the award were improper because several other firms were capable of providing the executive search services sought by Census. The Complainant argued that the contract “should have been open to full and open competition.”¹ The Competition in Contracting Act (CICA) of 1984 and Federal Acquisition Regulation (FAR) require that federal agencies award contracts after holding a full and open competition unless a specific exception applies.

The OIG interviewed individuals in Census’s contracting office who were involved with the award of the sole source contract. These individuals reported that they had relied on assertions from a senior employee (Senior Employee) working in the Office of the Census Director, which was the Census office seeking the recruiting services. According to the contracting office employees, the Senior Employee claimed that only one particular headhunting firm had the specialized experience and qualifications to do the work required. If true, this would have allowed Census to avoid holding a competition and to award the contract directly to that firm.

The OIG met with the Senior Employee to ask how the determination was made that only one headhunting firm (Headhunter)—which had no website, no employees save the owner, no prior government experience, and was operated out of a private residence in another region of the country—could be the only firm capable of performing the executive search for Census. In her initial interview with the OIG, the Senior Employee could not provide specific information about the market research she conducted, but told OIG investigators that she thought either the Census Director (Director) or a senior Census executive (Executive) had recommended the Headhunter.² Following this interview, on May 7, 2014, the OIG formally opened an investigation into the matter.

The OIG’s investigation found that the Census Bureau, in attempting to recruit top talent to fill a critical position at the agency, failed to adhere to several rules and regulations related to federal contracting and recruiting. Specifically, the OIG found:

- Census did not comply with CICA and the FAR when it awarded a sole source contract to the Headhunter.
- Census did not comply with federal regulations governing the use of commercial recruiting firms.

¹ OIG Case Management System (CMS) Doc. No. 1.

² CMS Doc. No. 3.

- The acceptance of voluntary services from the Headhunter implicates the Antideficiency Act.
- The Director did not comply with Department policy by receiving services from the Headhunter without a contract in place.
- The Director did not comply with Department policy and government-wide guidance by using his personal e-mail to conduct official government business.
- The Senior Employee did not comply with federal regulations in the procurement process that led to the contract award to the Headhunter.
- Census's Acquisition Division failed to perform its oversight function and did not appropriately advise the Director's office with respect to the acquisition.

The contract that Census issued to the Headhunter had a maximum fee of \$55,000, and because Census did not hire a candidate that he identified, Census was not required to pay him. The OIG's investigation did not substantiate fraud or attempts by government employees to benefit themselves at the government's expense. In fact, the Director and other employees involved in the matter appeared to be motivated by a desire to ensure the success of Census's decennial operation by attracting top talent from the private sector in a cost-effective manner. Nevertheless, in attempting to ensure the agency's success, Census officials failed—sometimes intentionally—to comply with the rules and regulations governing the contracting process and official conduct.

The resulting investigative report presents a case study in how a federal agency can fail to follow the rules while attempting to recruit senior officials. The report should also serve to remind the Department that, as holders of the public trust, employees cannot set aside compliance and ethics in pursuit of the agency's mission. While the rules and regulations constraining the government's actions with respect to contracting are many and complicated, federal employees cannot take shortcuts by ignoring them to achieve the agency's goals.

To illustrate how Census could have pursued its recruitment of top talent in compliance with the rules, the report concludes with a discussion of the various paths that Census could have taken, including by pursuing full and open competition or using the General Services Administration (GSA) Schedule to select a recruiting firm. The report also makes recommendations for Census to address issues going forward, including training for Census's acquisition staff regarding the requirements for sole source awards and legal review and approval of all sole source contracts requiring a justification prior to award.

II. Legal and Regulatory Overview

This investigation implicates a variety of federal statutes, regulations, and guidance, as well as Commerce policies. A brief introduction of the legal concepts involved in this matter is included below.

A. Antideficiency Act

The Antideficiency Act (ADA) prohibits federal agencies from engaging in certain activities related to the use of appropriated funds. One section of the ADA, codified at 31 U.S.C. § 1342, prohibits federal employees from accepting voluntary services for the government. The statute provides,

[A]n officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

B. Unauthorized Commitments

The Commerce Acquisition Manual (CAM) supplements the FAR and provides policies for Department of Commerce personnel related to the acquisition of goods and services. Section I.1 of CAM 1301.602 states “[i]t is the policy of the Department of Commerce that all acquisitions are to be made only by government officials having authority to make such commitments.” The policy notes that “[u]nauthorized commitments occur when the [Department] accepts goods or services in the absence of an enforceable contract entered into by an individual with delegated contracting authority.”

C. Department Policy and Guidance on the Use of Personal E-mail

The Department of Commerce policy on using personal e-mail, as issued on May 28, 2013, by the Chief Information Officer, provides,

DOC [Department of Commerce] employees and contractors are reminded that all official DOC e-mail communications must be made using their assigned DOC e-mail account. Official DOC e-mail communications are defined as any transfer of signs, writing, images, data or intelligence via e-mail for the intended purpose of supporting DOC missions and objectives. Use of personal e-mail accounts for official communications is prohibited.

The National Archives and Records Administration (NARA) publishes guidance for federal agencies concerning the appropriate handling of federal records, which includes specific provisions on maintaining e-mails that qualify as records. At all relevant times during the investigation, 44 U.S.C. § 3301 defined a record as,

[D]ocumentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.³

³ 41 U.S.C. § 3301. This was the definition in effect when the conduct occurred. The statute has since been amended.

NARA Bulletin 2013-03 provides,

While agency employees should not generally use personal e-mail accounts to conduct official agency business, there may be times when agencies authorize the use of personal e-mail accounts, such as in emergency situations when Federal accounts are not accessible or when an employee is initially contacted through a personal account. In these situations, agency employees must ensure that all Federal records sent or received on personal e-mail systems are captured and managed in accordance with agency recordkeeping practices.

NARA Bulletin 2014-06 provides,

[A]gency officials may create Federal records if they conduct agency business on their personal e-mail accounts. E-mail sent on personal e-mail accounts pertaining to agency business and meeting the definition of Federal records must be filed in an agency recordkeeping system.

D. Competition in Contracting Act

The Competition in Contracting Act of 1984 requires that all federal government contracts be awarded based on full and open competition unless a statutory exception applies.⁴ CICA states in relevant part,

[A]n executive agency in conducting a procurement for property or services shall—

- (1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation;⁵ and
- (2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.⁶

One statutory exception to CICA's "full and open competition" requirement states,

An executive agency may use procedures other than competitive procedures only when—

- (1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency.⁷

The FAR states that use of this exception "may be appropriate . . . [w]hen there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities."⁸

⁴ 41 U.S.C. § 3301.

⁵ The FAR prescribes the policies and procedures that federal agencies must follow in acquiring goods and services. FAR 1.101.

⁶ 41 U.S.C. § 3301 (a).

⁷ 41 U.S.C. § 3304 (a)(1) (formerly 41 U.S.C. § 253); see also FAR 6.302-1 "Only one responsible source and no other supplies or services will satisfy agency requirements." (citing 41 U.S.C. § 3304(a)(1)).

⁸ FAR 6.302-1(b)(1)(i); 13.106-1(b).

E. Regulations Concerning the Use of Commercial Recruiting Firms

5 C.F.R. Part 300, Subpart D prescribes regulations for federal agencies concerning the use of commercial recruiting firms and nonprofit employment services. 5 C.F.R. § 300.403 provides,

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

- (a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;
- (b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and
- (c) The agency continues its own recruiting efforts.

5 C.F.R. § 300.405 provides,

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the “written request” required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment except when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

- (1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;
- (2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;
- (3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and
- (4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

III. Organization of the Report and Methodology

The remaining sections of this report include: a factual description of events in roughly chronological order (Chapter 2); the OIG’s analysis of those events in light of governing laws, regulations, and policies (Chapter 3); a note on comments from certain individuals involved in the events (Chapter 4); and conclusions and recommendations (Chapter 5).

The OIG identified information in the factual description of events through investigative interviews and the review of documents and e-mails related to the case. The OIG researched applicable legal standards and analyzed the events in light of those standards. Following the completion of its investigation, the OIG prepared a draft report presenting the relevant facts and the OIG's analysis. The OIG provided a copy of the draft report to the Census Director, the Senior Employee, and the Senior Acquisition Official and considered all comments received from those individuals before issuing its final report.

Chapter 2: The Facts

I. The Director and the Headhunter's Prior Association

John H. Thompson joined the Census Bureau in 1975 to work in the Statistical Methods Division and later became Chief of Census's Decennial Management Division, where he served as the senior career executive responsible for the 2000 decennial census. In 2002, after completing the decennial, he was contacted by the Headhunter, the owner and sole proprietor of a small business providing executive search services from his private residence outside of the mid-Atlantic region. In an interview with the OIG, the Headhunter stated that he specializes in recruiting statistical and research professionals in the health and social policy areas and has recruited epidemiologists, economists, statisticians, and other "advanced degree researchers" for various organizations for more than two decades. The Headhunter also told the OIG that he conducts recruiting searches discretely, noting that "I keep my mouth shut, and people respect that."⁹

After contacting Thompson in 2002, the Headhunter recruited him to work for an independent social research organization (Social Research Organization) that specializes in public opinion and survey research.¹⁰ The Social Research Organization hired Thompson to be an executive vice president, and he resigned from the Census Bureau in 2002.¹¹ In November 2008, he was promoted to be the president of that organization.¹²

During Thompson's tenure at the Social Research Organization, the Headhunter provided the organization with recruiting services.¹³ The Headhunter told the OIG that he did not interact with Thompson while working for the organization and has never actually met him in person. Thompson confirmed this and also testified that he has never had any financial dealings with the Headhunter.¹⁴ Thompson remained at the Social Research Organization until being nominated by the President of the United States to his current position, Director of the U.S. Census Bureau, in May 2013.¹⁵ Thompson was subsequently confirmed by the U.S. Senate and was sworn in as the 24th Census Director (Director) on August 8, 2013.¹⁶ In August of 2013, after the Headhunter learned of the Director's appointment, he e-mailed to offer his congratulations.

II. Initial Discussions Regarding a Contract with the Headhunter

The Director stated in his OIG interview that, soon after starting in that position, he determined that new leadership was necessary in an executive position within the Decennial

⁹ Headhunter Tr. I at 91-100.

¹⁰ This citation is on file with the OIG.

¹¹ Organization website.

¹² *Id.*

¹³ Headhunter Tr. I at 1234.

¹⁴ Director Tr. at 278, 392-99.

¹⁵ <http://www.whitehouse.gov/the-press-office/2013/05/23/presidential-nominations-sent-senate-0>.

¹⁶ <http://go.usa.gov/3kfSx>.

Census office (Decennial Position).¹⁷ The Census Bureau is responsible for conducting a decennial census every decade as set forth in the U.S. Constitution. Undertaking this endeavor requires years of research and planning, and in 2010, cost the U.S. taxpayers \$13 billion.¹⁸

The Director discussed the matter with the Executive, who agreed that new leadership was needed in the Decennial Position.¹⁹ The Executive and the Director then discussed working with a headhunter to help identify candidates to fill the position.²⁰ The Director told the Executive that he knew a recruiter from his previous job and thought he might be able to assist Census find candidates for the Decennial Position.²¹ The Executive told the OIG that she initially expressed skepticism with the idea of hiring a headhunter, explaining that Census had previously issued a contract to an executive search firm to conduct a different search, which had not been successful.²² According to the Executive, she was “irked” that Census was required to pay the firm, even though it had not found any appropriate candidates.²³ The Director responded to the Executive’s concerns by telling her that the Headhunter worked on a contingency-fee basis, and thus, Census would have to pay him only if he identified a candidate that Census ultimately hired.²⁴ Both the Executive and the Director agreed to look into the matter further.²⁵

Soon thereafter, in September 2013, the Director e-mailed the Headhunter to inform him that he “may have something that you'd be interested in.”²⁶ In the following month, the Director and the Headhunter had at least two telephone conversations.²⁷ According to both, these e-mails and phone calls related to the Director’s interest in the Headhunter conducting a recruiting search for the Decennial Position.²⁸ The Headhunter reported that the Director told him during those calls that there was an incumbent in the Decennial Position, and therefore, the search needed to be “totally confidential.”²⁹

The Director told the OIG that, at around the same time as his communications with the Headhunter, he also spoke with a senior contracting official from Census’s Acquisition Division (Senior Acquisition Official).³⁰ According to both the Director and the Senior Acquisition

¹⁷ Director Tr. at 140-53. The OIG did not review the basis for the Director’s determination that he needed to hire someone new for the Decennial Position and obtained no evidence to suggest that it was based on improper considerations.

¹⁸ Office of Inspector General, Department of Commerce, OIG-15-002, Top Management Challenges.

¹⁹ Executive Tr. at 141-43.

²⁰ *Id.* at 161-62.

²¹ Director Tr. at 777-80; Executive Tr. at 240-43.

²² Executive Tr. at 213-14, 238-40. The OIG did not investigate this earlier sole source award because it was outside the scope of the current investigation. However, because a sole source vehicle was used for services that are widely found in the commercial marketplace, this earlier sole source award may raise similar concerns as those discussed in this report.

²³ *Id.* at 199-200, 244, 247-48, 263-65.

²⁴ Director Tr. at 180-84; Executive Tr. at 248-50.

²⁵ Director Tr. at 185-86; Executive Tr. at 266-68, 276-77.

²⁶ Case File No. 39. Certain case documents are collected under CMS Doc. No. 99, and referred to throughout as “Case File No.”

²⁷ Case File Nos. 46, 87, and 88.

²⁸ Headhunter Tr. I at 434-40.

²⁹ *Id.* at 223-27.

³⁰ Director Tr. at 188-91.

Official, the Director asked the Senior Acquisition Official whether Census could enter into a contract with a headhunter if he were to be paid only in the event that Census selected one of his candidates.³¹ Both witnesses told the OIG that the Senior Acquisition Official informed the Director that it was possible.³² Neither recalled the Senior Acquisition Official advising the Director any further with respect to the acquisition process or the requirements for issuing a sole source award.³³

On October 21, 2013, the Director sent an e-mail to the Headhunter, writing, “I determined that we can engage your services. I’ll be in touch tomorrow.”³⁴ When the OIG asked the Director how he determined this, he explained, “because [the Senior Acquisition Official] told me.”³⁵

On October 29, 2013, the Director e-mailed the Senior Acquisition Official the Headhunter’s name and e-mail address. The Senior Acquisition Official responded to the Director’s e-mail two days later, writing,

[W]ho should [our] staff work with to define what [the Headhunter] will be doing for us[?] I know you said it was for recruiting a senior level position, but we need to complete some kind of Statement of Work along with other documents to complete the procurement.³⁶

III. The Executive Assigns the Senior Employee to Work on the Acquisition

On October 31, 2013, the Director forwarded the Senior Acquisition Official’s e-mail to the Executive, who responded, “Do you need help with this?”³⁷ The Executive suggested that they assign the Senior Employee to work with Census’s Acquisition Division on the procurement effort, to which the Director agreed.³⁸ The Executive stated in her OIG interview that she assigned the Senior Employee to work on the acquisition because of the sensitive nature of the project—namely, that it involved replacing an incumbent in the Decennial Position.³⁹ The Executive told the OIG that, shortly after her discussion with the Director, she asked the Senior Employee to work with Census’s Acquisition Division to see whether it would be possible to award a recruiting contract to the Headhunter, explaining to the Senior Employee that the Director was familiar with the Headhunter and knew that he would work on a

³¹ *Id.* at 188-91; Senior Acquisition Official Tr. II at 257-59.

³² Senior Acquisition Official Tr. II at 257-59, 260-61; Director Tr. at 192.

³³ Senior Acquisition Official Tr. II at 543-47; Director Tr. at 370-72. In his first interview with the OIG, the Senior Acquisition Official stated that he did not recall his conversation with the Director regarding the headhunting contract. Senior Acquisition Official Tr. I at 172, 193. In his second interview with the OIG, when pressed to recall, the Senior Acquisition Official stated that he thought there was a conversation with the Director in which he asked the Senior Acquisition Official whether it was possible to do a contract with a headhunter, to which the Senior Acquisition Official recalled responding “sure, it is.” Senior Acquisition Official Tr. II at 257-59, 260-61.

³⁴ Case File No. 55.

³⁵ Director Tr. at 910.

³⁶ Case File No. 44.

³⁷ *Id.*

³⁸ Case File No. 50.

³⁹ Executive Tr. at 456-58.

contingency-fee basis.⁴⁰ According to the Executive, she explained to the Senior Employee that Census had awarded a sole source contract to a different headhunting firm a few years prior.⁴¹

The Executive told the OIG that she believed that she told the Senior Employee either during their first conversation or very early in the process that the purpose of retaining a headhunter was to search for candidates to replace the incumbent for the Decennial Position.⁴² She further explained that she had been concerned that, if she had engaged an employee in Census's Human Resources office, information could be leaked.⁴³ Moreover, the Executive told the OIG that working on the matter would not have been part of the Senior Employee's normal duties, and thus, the Senior Employee would want to know why the Executive was assigning the matter to her.⁴⁴

The Senior Employee told the OIG that she believed she was told that the Headhunter would be searching for potential candidates to replace the incumbent in the Decennial Position sometime after her initial conversation with the Executive, but she could not recall precisely when that occurred.⁴⁵

IV. The Acquisition Specialist Is Assigned and Works with the Senior Employee on the Contract

In early November 2013, a Census contracting employee (Acquisition Specialist) was assigned to work on the procurement and reached out to the Senior Employee to begin the acquisition process. The Acquisition Specialist told the OIG that, when she first contacted the Senior Employee, the Director's office had already identified the Headhunter as the search firm it wanted to use.⁴⁶

On November 7, 2013, the Acquisition Specialist provided the Senior Employee with a statement of work (a contracting document that describes the services to be provided) that was used in the earlier headhunting contract that the Executive had mentioned to the Senior Employee.⁴⁷ The following week, on November 13, the Senior Employee and the Acquisition Specialist met again to discuss the procurement. Although the Acquisition Specialist and the Senior Employee told the OIG that they could not recall the specifics of this conversation, an e-mail from the Acquisition Specialist to the Senior Employee later that day suggests that they spoke about the process they would follow, and the prior headhunting sole source award. In her e-mail to the Senior Employee, the Acquisition Specialist advised,

[T]he previous procurement was indeed issued using a sole source justification. Depending on the justification used, the Gov. is required to post a synopsis of the action for at least 14 days before the action is completed (meaning 14 days before award is issued). The synopsis shall

⁴⁰ *Id.* at 288-98.

⁴¹ *Id.* at 280-98.

⁴² *Id.* at 464-78.

⁴³ *Id.* at 478-81.

⁴⁴ *Id.* at 475-78.

⁴⁵ Senior Employee Tr. II at 260-69, 434-39.

⁴⁶ Acquisition Specialist Tr. at 365-66, 381.

⁴⁷ Case File No. 77.

include a description of the services being acquired. During this time, any company that feels they have the capabilities to provide the required services to the Gov. shall submit a capabilities statement for the Gov's evaluation to see if that source is also a potential service provide[r], or if indeed the one identified for the sole source is still the only source. If the evaluation of capabilities turn out as not favorable for the gov, we can proceed with the sole source. If the [evaluation] of capabilities does demonstrate that there are other potential source[s], we would have to compete the procurement.

In the previous procurement, a synopsis was posted 14 days prior to award. Three vendors submitted capabilities statements that were evaluated by [a Census official]. *He determined that these other companies were not capable of providing services, so the contract was awarded to the originally identified source. After the contract, a justification was posted.*⁴⁸

At some point during these discussions, the Senior Employee requested the materials from the earlier headhunting procurement, and on November 14, 2013, a different acquisition official forwarded the statement of work and justification document from the earlier 2011 procurement to the Senior Employee.⁴⁹ A few days later, on November 18, the Acquisition Specialist e-mailed the Senior Employee requesting that she send the statement of work and sole source justification for the current contract for review.⁵⁰ Later that day, the Senior Employee forwarded the draft statement of work and a document titled "Justification for Other than Full and Open Competition" (Justification Document) to the Acquisition Specialist.⁵¹ The FAR requires that agencies include a document justifying a decision not to pursue competition under certain circumstances, and includes specific requirements for what information should be included in the justification.⁵² The Justification Document the Senior Employee forwarded to the Acquisition Specialist on November 18 was the same in all material respects as the Justification Document signed by the Acquisition Specialist and ultimately published by Census on February 28, 2014.⁵³ Thus, the evidence points to the Senior Employee as the source of the Justification Document.⁵⁴

V. The Headhunter Identifies Candidate One

On November 16, 2013, two days before the Senior Employee sent the Justification Document to the Acquisition Specialist, the Headhunter e-mailed the Director to propose the first

⁴⁸ Case File No. 78 (emphasis added).

⁴⁹ Case File No. 79.

⁵⁰ Case File No. 80.

⁵¹ *Id.*

⁵² FAR 6.302; FAR 6.303.

⁵³ Compare Case File No. 80 (draft Justification Document forwarded by Senior Employee on November 18) with Case File No. 15 (Justification Document published by Census on February 28, 2014).

⁵⁴ The Senior Employee repeatedly testified that she could not recall whether she had ever seen the Justification Document and could not recall drafting it. Senior Employee Tr. I at 1030-32; Senior Employee Tr. II at 889-92, 902-05. As discussed above, however, it appears from the evidence that she prepared that document. Moreover, the Acquisition Specialist testified that the Justification Document was provided to her by the Director's office, and that typically, it is an official from the program office who prepares it. Acquisition Specialist Tr. at 752-58, 765-70. Another acquisition specialist who signed the contract also testified that the justification document is normally provided by the program office. Acquisition Specialist 2 Tr. at 300-02. It is uncontested that the Senior Employee was the only person from the Director's office working with the Acquisition Specialist on the procurement. Thus, the vast weight of the evidence points to the Senior Employee as the source of the Justification Document.

candidate for consideration (Candidate One) asking the Director to “let me know what you think, including anything you like or don't like.” At the time that the Headhunter proposed Candidate One, Census did not have a contract in place to obtain services from the Headhunter and would not have one in place for three months. Further, Census did not have a vacancy announcement posted for the Decennial Position and would not post one for almost one year.

In the Headhunter's November 16 e-mail, he attached Candidate One's résumé and a cover letter on the Headhunting firm's letterhead that included the Headhunter's signature.⁵⁵ The signed cover letter indicated that Candidate One was “being submitted for the position of **Exploratory**.”⁵⁶ When the OIG asked the Headhunter why he had written “Exploratory” instead of Decennial Position, he cited the need for discretion, noting that per instructions he received from the Director, he “was not even allowed to tell [candidates] what the position was.” The OIG also asked whether the Headhunter had searched for candidates other than for the Decennial Position, and he reported that he had not.⁵⁷

On November 17, one day after receiving the Headhunter's e-mail about Candidate One, the Director responded, “I'm not sure if he is the one, but it's an amazing start. I'll share this with a few folks and get back with you.”⁵⁸ E-mail records indicated that the Director then forwarded the Headhunter's e-mail to the Executive, noting that the proposed candidate was “Not bad for a first attempt. Not sure if he's the one, but it's heading in a good direction.”⁵⁹

VI. The Acquisition Process Continues

Soon after the Headhunter's correspondence with the Director concerning Candidate One, the Acquisition Specialist e-mailed the Headhunter to explain that the Census Bureau was “looking for an experienced firm that can assist our team to identify appropriate and qualified candidates for consideration and ultimate selection of the best candidates to fill critical executive leadership positions.”⁶⁰ The Acquisition Specialist went on to explain that “your company . . . was identified through market research as a potential services [provider] for the required services.”⁶¹ The Acquisition Specialist concluded the e-mail to the Headhunter by requesting that he send her a “capabilities statement” providing information on the following: (1) previous experience recruiting executives for the federal government; (2) company accomplishments; (3) knowledge of federal hiring regulations; (4) summary of recruiting approach; (5) pricing approach; and (6) three references.

⁵⁵ See App. A (Headhunter's cover letters transmitting candidates' résumés).

⁵⁶ App. A (emphasis in original).

⁵⁷ Headhunter Tr. I at 434-37, 1171-73.

⁵⁸ Case File No. 36.

⁵⁹ Case File No. 37.

⁶⁰ The OIG found no evidence indicating that the Acquisition Specialist was aware that the Headhunter had already proposed Candidate One at that time.

⁶¹ The OIG did not obtain evidence suggesting that Census had conducted any market research at this point.

On November 27, the Headhunter responded to the Acquisition Specialist with the following information,

1. [The Headhunter's firm] has never worked directly with the Federal Government on any search projects. However, the company has 28 years of previous experience with recruiting for executive-level positions in all areas of statistical research and operations, including survey methodologists, statisticians/biostatisticians, economists, epidemiologist, etc. for a wide variety of social and health science research organizations.
2. Company Accomplishments: [The Headhunter's firm] has filled many senior positions with many types of organizations. A few typical positions include: (a) CEO of a [medical] research company (b) Vice President of Survey Research for a consulting firm (c) . . . Director, Survey Research, for a research/consulting company (d) Chief [medical official] for a pharmaceutical company (e) other examples will be provided on request.
3. Brief summary of your recruiting approach, including outreach strategy: [The Headhunter's firm] works solely through personal contact. The company does not have a website and does not use mass media approaches, including advertising. Consequently, all contact is made through recommendations only, keeping the search off the public radar and assuring that only quality and referenced candidates are located.⁶²
4. Pricing approach employed by your company: [The Headhunter's firm] uses only one form of pricing—the fee for a completed project would be 25% of the hire's first year guaranteed income. This does *not* include relocation costs, sign-on bonuses, etc., but would include any *guaranteed* bonuses (*not* merit bonuses, production bonuses, etc.).
5. Point of contact of three references, preferably from federal clients or statistical entities clients: [references provided for three clients].

The Headhunter's response did not address the Acquisition Specialist's question about his knowledge of federal hiring regulations.⁶³

A. The Acquisition Specialist Conducts Market Research and Refers Six Small Business Firms to the Senior Employee for Consideration

Around this time, the Acquisition Specialist conducted market research into other headhunting firms that might be able to provide the executive search services Census was seeking. On November 28, the Acquisition Specialist e-mailed the results of her search to the Senior Employee. In her e-mail, the Acquisition Specialist identified six firms that, in her view, would be “a good fit” to perform the executive search services for Census.⁶⁴ The Acquisition Specialist told the Senior Employee that she was still moving forward in communicating with the Headhunter, but noted the following,

⁶² Although the Headhunter's capability statement represented that he works through references alone, he told the OIG that he often uses the internet to conduct searches. Headhunter Tr. I at 139-43. In addition, we note that he identified at least one candidate in this search through LinkedIn. Headhunter Tr. I at 611-16.

⁶³ Case File No. 19.

⁶⁴ Acquisition Specialist Tr. at 437-38.

In the meantime, I did some additional research to have more options, in case they are needed. Below is a list of some companies I was able to find. All these companies are GSA schedule contract holders, and small businesses. Some of them are service-disabled small businesses and 8(a). GSA Schedule provides a more streamlined process (we request and review proposals from three vendors, select the best, and issue the order... no need to publicize (post) or write up justifications as long as at least three vendors are reviewed). With an 8(a) company, we can go directly to them.

For all companies, I have included a short description, with their website link and the link to their GSA contract, which provides ordering info (e.g. payment terms, and further description of services).

Please feel free to check some or all of these vendors, and let me know if you would like to receive further info on any of them.⁶⁵

B. The Senior Employee Rejects the Six Small Businesses Referred by the Acquisition Specialist as Not Capable of Performing the Work

The Acquisition Specialist told the OIG that the Senior Employee rejected the six small businesses she had sent to her, though the Senior Employee's rejection and any supporting documentation was not found in the contract file.⁶⁶ When the OIG asked the Senior Employee how she evaluated the six firms, she reported that she visited the links contained in the Acquisition Specialist's e-mail, which brought her to the firms' websites and GSA Schedule contracts, and "determined that based on what was there, that they didn't have the expertise, um, or the experience . . . [t]o meet the requirement."⁶⁷ The Senior Employee also told the OIG, through her attorney, that she recalled having only oral communications with the Acquisition Specialist regarding her evaluation and rejection of these six firms. The Senior Employee did not provide the OIG with any written documentation evincing her evaluation of these six firms.

C. The OIG Independently Reviews the Six Small Business Firms Referred by the Acquisition Specialist

As discussed in more detail in Chapter 3 of this report, the OIG conducted a review of these six firms in the same manner as reported by the Senior Employee: by visiting the websites and GSA supply schedule documents enclosed in the Acquisition Specialist's e-mail and examining

⁶⁵ Case File No. 51. As noted in the Acquisition Specialist's e-mail, the U.S. General Services Administration routinely establishes long-term, government-wide contracts (GSA Schedule contracts), which provide federal agencies with access to commercial products and services at pre-negotiated discounted prices. Also as described in the Acquisition Specialist's e-mail, federal agencies may acquire products and services off these GSA Schedule contracts via a streamlined acquisition process. The Acquisition Specialist's e-mail also noted that some of the firms she presented were small businesses and/or socio-economically disadvantaged business (e.g., 8(a), service disabled), which may receive contracting preferences under the FAR.

⁶⁶ Case File No. 71.

⁶⁷ Senior Employee Tr. at 1128, 1146-47, 1153.

the information contained there.⁶⁸ The purpose of the OIG’s review was to assess each firm in accordance with the factors that Census used to justify its sole source award to the Headhunter, namely: (1) experience conducting executive searches; (2) experience recruiting in the statistical, survey, research, and education field; (3) experience with the federal government; and (4) experience with other public-sector entities.

The OIG’s review revealed that at least three of the six firms listed experience corresponding to the factors listed above and identified by Census.⁶⁹ Specifically, three of the six firms listed on their websites and/or their GSA supply schedule documentation past experience successfully performing executive search services for the federal government and past experience recruiting in the “statistical / survey / research and education field,” as specified in the Special Notice. The results of the OIG’s review are presented below in Table I, and discussed in Chapter 3.

Table I. The OIG’s Independent Review of the Six Small Business Firms Proposed by the Acquisition Specialist

Firm	Conducts executive searches?	Has experience recruiting in “statistical/survey/research and education field”?	Has experience working with federal government?	Has other public sector experience?
Firm A	Not listed	Not listed	Yes	Not listed
Firm B	Not listed	Not listed	Yes	Yes
Firm C	Yes	Yes	Yes	Not listed
Firm D	Yes	Yes	Yes	Yes
Firm E	Yes	Yes	Yes	Yes
Firm F	Yes	Yes	Yes	Yes

D. The Acquisition Specialist Discusses the Acquisition with a Department Attorney

The Acquisition Specialist told the OIG that she discussed the procurement with an attorney-advisor working for the Department’s Office of General Counsel (Attorney) in order to get advice regarding the process she intended to follow and confirm that her documentation was sufficient.⁷⁰ According to the Attorney, she told the Acquisition Specialist to make sure that she conducted market research because she had to be able to justify any sole source decision and to make sure all the requirements in the FAR were followed.⁷¹ While the Attorney would come to review two documents in the contract file, it does not appear that she was asked to, nor did

⁶⁸ To ensure that the information reviewed was the same as what would have been reviewed by the Senior Employee, the OIG examined the file properties for the GSA supply schedule documents linked in the Acquisition Specialist’s e-mail, finding that each had been created and last modified prior to November 2013, when the Senior Employee would have reviewed the documents. The OIG also used the Internet Archive (<https://archive.org>) to review snapshots from each of the firm’s websites before the time period when the Senior Employee would have reviewed those sites. The OIG also examined snapshots of those websites after November 2013, to note whether any changes relevant to the analysis had been made during that timeframe.

⁶⁹ Firm C could have also been considered capable by this test, as having other, non-federal, public sector experience was not a mandatory requirement. However, the OIG used a more cautious approach to evaluating a firm’s capability.

⁷⁰ Acquisition Specialist Tr. at 1790-95.

⁷¹ Attorney Tr. at 812-20, 834-38, 840-43.

she, review Census's Justification Document or the sole source contract to the Headhunter prior to contract award.⁷²

VII. The Headhunter Identifies Candidates Two and Three and the Director Requests that Communication Move to Personal E-mail

On December 4, 2013, about two months prior to award of the contract, the Headhunter proposed a second candidate (Candidate Two) for consideration by the Director. In his e-mail, the Headhunter included Candidate Two's résumé and a cover letter on his firm's letterhead, which again indicated that the candidate was being submitted for the position of "Exploratory."⁷³ Later that day, the Director forwarded Candidate Two's résumé to the Executive, asking for her opinion.⁷⁴ The following day, the Executive responded by writing, "Looks like a terrific CIO [Chief Information Officer] candidate."⁷⁵ The following day, the Headhunter proposed Candidate Three for the Director's consideration.⁷⁶

On December 8, the Headhunter e-mailed the Director requesting feedback on Candidates One, Two, and Three, explaining that "it would really help me if you could have at least a quick look at the candidates I've sent and let me know what you like and don't like about them. I have more people in mind, but I don't want to send them without getting some feedback on the others first."⁷⁷

One day later, the Director responded to the Headhunter's e-mail,

Sorry [Headhunter's name]. They are close, I think the best is [Candidate Three.] However, I'm looking for someone who has a little more experience in incorporating IT into operational practices. That is, a little more of an operations research background in the IT arena.

As an aside, I have a gmail account that is:

[The Director's personal e-mail address]

It's probably better to use that one. My government e-mail is public information.⁷⁸

From this point forward, the OIG's review of the Director's government e-mail account did not show any further communication with the Headhunter until after the contract was awarded two months later.

⁷² The Attorney told the OIG that the Office of General Counsel's practice was that only sole source contracts meeting certain financial thresholds (generally above \$100,000) were required to be submitted for legal review. When these thresholds are not met, contracts will obtain legal review only when an acquisition specialist or the program office requests it. Attorney Tr. at 1701-06, 1772; CMS Doc. No. 80.

⁷³ App. A.

⁷⁴ Case File No. 52.

⁷⁵ *Id.*

⁷⁶ See Table 3 (excerpt of Headhunter's tracking sheet listing Candidate Three as proposed on December 5); see also Case File No. 33 (December 8 e-mail from Headhunter to the Director discussing Candidates One, Two and Three).

⁷⁷ Case File No. 34.

⁷⁸ *Id.*

The OIG requested the Director provide all personal e-mail correspondence with the Headhunter concerning this matter. In response, the Director provided 27 e-mails from his personal e-mail account. These show that the Headhunter sent 15 e-mails to the Director's personal e-mail account, and that the Director sent 12 e-mails from that account to the Headhunter. During this time, the record shows that the Headhunter proposed Candidates Four, Five, Six, and Seven. The e-mails from the Director to the Headhunter during this time indicate that he was evaluating the candidates, and an e-mail dated February 11, 2014, from the Director to the Headhunter suggests that the Director spoke with Candidate Four.⁷⁹ On February 11, 2014, the Director e-mailed the Headhunter from his personal e-mail account, stating,

[Candidate Four] might be OK. We talked, but he seemed to be a little hesitant about the job. I'm going to try and get out to [city] sometime over the next month, so if he has some time available, including lunch, dinner, or breakfast, we could meet in person. As for [Candidate Five] he would be a great CIO, but that's not what I need right now. [Candidate Six] is a good academic, but I don't think she has the management experience to do the job I'm looking at.

On February 18, 2014, the Headhunter proposed Candidate Seven, noting that "he's a very interesting young guy who's been right at (or maybe even ahead of) the newest technology and techniques."⁸⁰ Soon after, the contract was awarded to the Headhunter's firm. The Director and the Headhunter continued to exchange e-mails regarding Candidate Seven over the Director's personal e-mail for the next nine days.

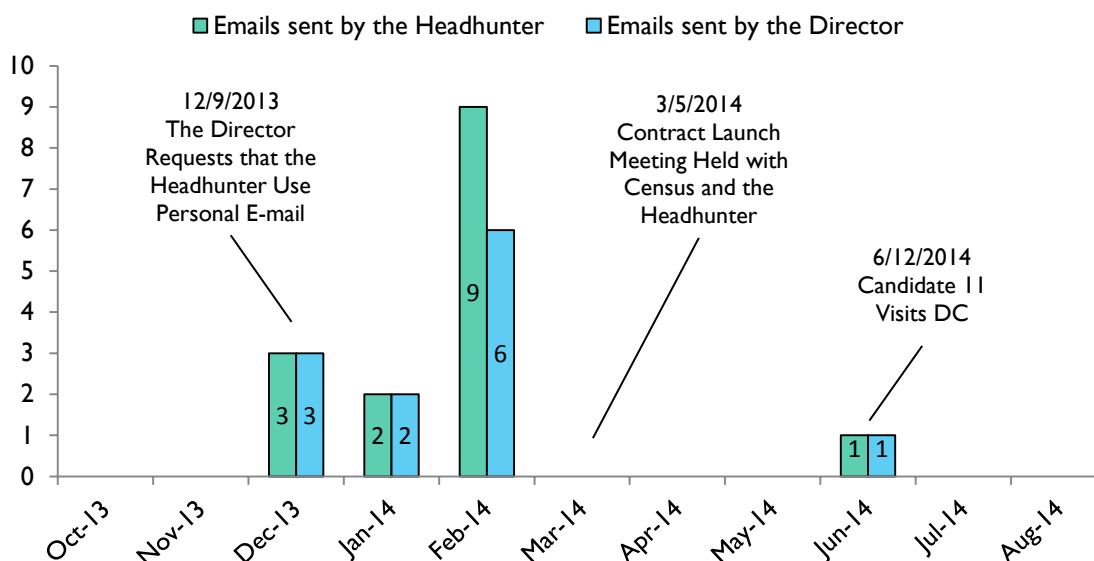
On March 5, Census held an official contract launch meeting with the Headhunter.⁸¹ Following the launch meeting, it appears that the Director and the Headhunter stopped using the Director's personal e-mail and resumed correspondence on the Director's government e-mail account. Table 2 below shows the volume of e-mails sent by the Headhunter and by the Director using the Director's personal e-mail account.

⁷⁹ Case File No. 73.

⁸⁰ Case File No. 81.

⁸¹ Post-award conferences or "kick-off" meetings are often required by the contract's statement of work. Here, the statement of work required a "launch meeting," which was scheduled for "TBD." Case File No. 18.

Table 2. E-mails Between the Headhunter and the Director Using the Director’s Personal E-mail Account



The Headhunter confirmed to the OIG that his search for candidates for the Decennial Position continued during the time he and the Director communicated on personal e-mail.⁸² The Headhunter also provided the OIG with a document that he used to track the names and dates of candidates that were presented to the Director for consideration during this time, along with his notes about those candidates, which is excerpted in Table 3 below.⁸³

Table 3. First Excerpt from Headhunter’s Tracking Sheet on Candidates⁸⁴

Candidate	Client	Date Sent	Sent To	Position	Resolution Start Date
[Candidate One]	US Census	November 16 2013	[the Director]		No
[Candidate Two]	US Census	December 4 2013	[the Director]		No
[Candidate Three]	US Census	December 5 2013	[the Director]		
[Candidate Four]	US Census	December 17 2013	[the Director]		Interesting, wouldn't relo
[Candidate Five]	US Census	January 24 2014	[the Director]		Good CIO, not Director
[Candidate Six]	US Census	January 28 2014	[the Director]		Too academic
[Candidate Seven]	US Census	February 18 2014	[the Director]		Too junior

The notes in the far right column titled “Resolution Start Date” provide information on the candidates with an explanation regarding why the Director and the Executive thought they were not adequate for the position.

⁸² Headhunter Tr. I at 2073-78, 2116-20, 2144-56.

⁸³ To validate the accuracy of the document provided by the Headhunter, the OIG reviewed the date on which the Headhunter noted that résumés were sent to Census and compared this with information obtained from a review of the Headhunter’s and Director’s e-mail correspondence. In the cases where the OIG was able to locate e-mails, the dates were found to match what the Headhunter entered into his tracking document.

⁸⁴ The original version of the document provided by the Headhunter included names, which have been redacted by the OIG.

VIII. Census Issues Its Synopsis/Special Notice and Awards the Sole Source Contract to the Headhunter

On January 13, 2014, Census published a “Special Notice” announcing its intent to issue a sole source contract to the Headhunter for “Recruiting Services.”⁸⁵ The Special Notice stated that the Census Bureau had “an immediate need for . . . consulting and support services in the area of Human Resources and Executive Search & Recruitment.”⁸⁶ The Special Notice went on to state that Census needed “support services in the search of candidates to fill prospective Senior Executive Level positions whose fulfillment is critical to the Bureau’s mission.”⁸⁷

With respect to contractor requirements, the Special Notice stated,

The selected contractor must have extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical/survey/research and education field, preferably for the public sector. The contractor must have a proven record of accomplishment for networking, attracting and recruiting the best possible candidates within high quality statistical, social science research, not for profit, and public interest background.⁸⁸

The Senior Employee told the OIG it was against these requirements that the Headhunter and the 13 other firms were judged.⁸⁹

The Special Notice estimated that the date of award would be January 22, 2014.⁹⁰ The Special Notice also advised that it was “not a request for competitive proposals” but stated that “[i]nterested sources may submit a capability statement, proposal, or quotation which shall be considered by the agency.”⁹¹ The Special Notice announced that interested sources could submit their materials to the Acquisition Specialist by Friday, January 17, 2014.⁹²

⁸⁵ Case File No. 16. The Acquisition Specialist told the OIG that the “Special Notice” constituted the Synopsis required by the FAR and referred to in her e-mail to the Senior Employee on November 13, 2013.

⁸⁶ *Id.* at 1.

⁸⁷ *Id.*

⁸⁸ *Id.* at 1-2.

⁸⁹ Senior Employee Tr. 1 at 1632-35, 1652-55, 1677-83.

⁹⁰ Case File No. 16 at 2.

⁹¹ *Id.*

⁹² *Id.*

A. A Senior Official from the Office of the Secretary Recommends that Census Consider Cancelling the Proposed Sole Source Award to the Headhunter and a GSA Contracting Representative E-mails the Acquisition Specialist Regarding Other Potential Sources

On January 14, 2014, a senior human resources employee from the Office of the Secretary (OS) (OS Senior Official) e-mailed Census Human Resources officials to inquire about the Special Notice issued by Census the previous day. On January 16, a Census human resources (HR) official responded to the OS Senior Official, stating that “senior leadership would like to have the capability of engaging the services of an executive search firm to support recruiting efforts for vacant Senior Executive Service (SES) positions, should the need arise,” and incorrectly stating that the Headhunter “was one which the Census Bureau engaged when it last recruited to fill” a similar position.⁹³ That same day, the OS Senior Official responded, stating “there’s a good chance that this [award] will be challenged [by a potential offeror] so if this is not an immediate need, Census may want to consider pulling it down.”⁹⁴ The OS Senior Official’s response was forwarded to the Senior Acquisition Official and Senior Employee on January 16.⁹⁵ The OIG did not locate a response from either the Senior Acquisition Official or Senior Employee to this e-mail, and the Special Notice was not rescinded.

“if this is not an immediate need, Census may want to consider pulling it down.”

- OS Senior Official recommending that Census reconsider its plans to issue a sole source contract to the Headhunter

On January 21, 2014, a contracting representative from GSA e-mailed the Acquisition Specialist in reference to Census’s Special Notice.⁹⁶ The GSA contracting representative told the Acquisition Specialist that GSA had numerous recruiting firms that could assist Census with its hiring needs on two of its GSA Schedules (Schedule 738x and Schedule 736).⁹⁷ The Acquisition Specialist, who had moved to a new position, responded that she was “no longer [an acquisition specialist] under the Census Bureau Acquisition Division,” but told the GSA contracting representative that she would forward his e-mail to other [acquisition employees] at Census “for any future reference.”⁹⁸ Although the Acquisition Specialist left the Census Bureau Acquisition Division, she remained involved with the procurement.

B. Seven Firms Submit Capability Statements in Response to Census’s Special Notice, Which Were All Rejected by the Senior Employee as Not Capable of Performing the Work

Seven firms submitted capability statements in response to Census’s Special Notice announcing its intent to issue a sole source award to the Headhunter. (These seven firms were different from the six firms identified from the GSA Schedule by the Acquisition Specialist and referred

⁹³ Case File No. 56. The Headhunter had never performed recruitment services for Census or any other federal government agency prior to the work he performed here.

⁹⁴ *Id.*

⁹⁵ Case File No. 57.

⁹⁶ Case File No. 91.

⁹⁷ *Id.* Schedule 738x is GSA’s Human Resources and Equal Employment Opportunity Schedule, and Schedule 736 is GSA’s Temporary Administration and Professional Staffing Services Schedule.

⁹⁸ *Id.*

to the Senior Employee, which the Senior Employee also rejected.) The Acquisition Specialist sent the seven capability statements to the Senior Employee, who evaluated them. The Senior Employee's assessment is set forth in a "Technical Assessment," which was signed by the Senior Employee on January 31, 2014.⁹⁹ Like the six firms discussed previously, the Senior Employee found that none of the seven firms were capable of performing the headhunting services required by Census.¹⁰⁰ Specifically, the Senior Employee's Technical Assessment stated that none of the seven firms demonstrated "extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical, survey, and research and education fields, preferably for the public sector," and that none of the firms demonstrated a "proven record of accomplishment for networking, attracting and recruiting the best possible candidates within a high quality statistical and social science research background." The Technical Assessment concluded that "none of [the firms] possess the expertise required by the Census Bureau within the statistical, survey, and research and education fields, to complete the work effectively and within the short time frame. In addition, the cost/fee structure presented by most of these firms is not the most cost-effective for the Bureau," and thus, the Director's office "would still like to continue this procurement as a sole source to [the Headhunter]."¹⁰¹

On January 22, the Acquisition Specialist e-mailed her supervisor and the Senior Acquisition Official, asking,

[A]re we good to move ahead with engaging the [Headhunter] and starting the contract award process? As of Friday Noon, we had received capabilities statements from 6 interested companies¹⁰². . . . [The Senior Employee] reviewed them and didn't find any of these companies to have the capabilities or expertise required . . . so she still wants to move forward with a sole source. . . . Please let me know how to proceed.¹⁰³

The Acquisition Specialist's supervisor responded, copying the Senior Acquisition Official, and advised the Acquisition Specialist to "document the file" because there was "a risk that a decision to sole source could be challenged by one of these vendors."¹⁰⁴

On January 28, the Acquisition Specialist sent the Senior Employee's Technical Assessment evaluating and rejecting the seven firms to the Attorney for her review. On January 29, the Attorney provided minor comments to the draft and advised the Acquisition Specialist to put the Technical Assessment in the contract file along with a copy of the Special Notice and all capability statements received.¹⁰⁵ Both the Acquisition Specialist and the Attorney told the OIG that they did not review the capability statements themselves, but instead, relied on the Senior Employee's review to determine whether each firm was capable of meeting the requirements.¹⁰⁶

⁹⁹ Case File No. 17.

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.*

¹⁰² The seventh firm submitted a capability statement after this e-mail.

¹⁰³ Case File No. 10.

¹⁰⁴ *Id.*

¹⁰⁵ Case File No. 85.

¹⁰⁶ Acquisition Specialist Tr. at 2661-66; Attorney Tr. at 1751-58.

Also on January 28, 2014, approximately three weeks before the contract was awarded, the Headhunter e-mailed the Acquisition Specialist, stating “Do we need to talk to start the process? . . . I think we need to get it rolling, as [the Director] is starting to get interested in a candidate.”¹⁰⁷ The Acquisition Specialist forwarded the Headhunter’s e-mail to her supervisor, stating, “Keeping you in the loop. I received the email below from [the Headhunter’s company] (recruiting company identified by DIR’s [Director’s] office). . . . Seems there is some interest from DIRs office for this action to be completed asap.”¹⁰⁸

C. The OIG Independently Reviews the Seven Firms that Submitted Capability Statements

The OIG reviewed the submissions from the seven firms in light of the requirements set forth in the Special Notice, which are the requirements the Senior Employee told the OIG potential offerors had to meet in order to be deemed capable of performing the work. The OIG’s review determined that at least two of the firms, Firms 5 and 7 on the Senior Employee’s Technical Evaluation, provided evidence of “extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical, survey, and research and education fields,” including experience successfully conducting executive level searches for the federal government.

The results of the OIG’s review of the seven firms’ capability statements are set forth in Table 4 below and analyzed in Chapter 3.

Firm 5 in Brief (rejected by Senior Employee as not capable)

A large, international recruiting firm that has successfully conducted executive searches for numerous for-profit companies, federal and state government agencies, universities, associations, and nonprofit organizations, including those in the statistical, survey, research and education fields.

Representative placements include: Analytical leadership positions at the World Bank and SEC, a senior IT position at Department of Education, economics leadership positions at the Treasury, President and CEO at a large, nonprofit company, CFO at a large state university foundation, and President at a large public university.

Firm 7 in Brief (rejected by Senior Employee as not capable)

A small business that has successfully performed executive search services for the federal government for several years, scored a 98 out of a possible 100 in a Dun & Bradstreet Past Performance Evaluation, and was rated in the top 20 percent of all government contractors to have successfully undergone evaluation through GSA’s Schedule Contract approval process.

Representative placements include: An analytical leadership position at FDA, several managers at an analytics firm, vice president of technology at a national service organization, and several senior positions at the IRS, GAO, and Defense Department.

¹⁰⁷ Case File No. 2.

¹⁰⁸ *Id.*

Table 4. The OIG’s Review of Capability Statements Received in Response to Census’s Special Notice

Firm	Conducts executive searches?	Has experience recruiting in the “statistical/survey/research and education field”?	Has experience working with federal government?	Has other public sector experience?
Firm 1	Yes	Not listed	Not listed	Yes
Firm 2	Yes	Not listed	Yes	Not listed
Firm 3	Yes	Not listed	Not listed	Yes
Firm 4	Yes	Not listed	Yes	Yes
Firm 5	Yes	Yes	Yes	Yes
Firm 6	Yes	Not listed	Yes	Yes
Firm 7	Yes	Yes	Yes	Yes

D. Census Awards the Sole Source Contract to the Headhunter

In mid-February 2014, Census awarded a contract to the Headhunter on a sole source basis, claiming that his firm was the only responsible source that could satisfy the Census Bureau’s needs. A different acquisition employee signed the contract on behalf of Census—not the Acquisition Specialist, who had assumed a different position in Census. The obligated amount on the contract was \$55,000, and the Headhunter’s fee was 25 percent of the candidate’s annual base salary plus allowable and allocable direct costs (such as travel). The 25 percent fee was due only if Census hired a candidate referred by the Headhunter within 12 months of the date of referral. The period of performance on the contract was six months (through mid-August 2014), with an option to extend the period of performance for one six-month period. The technical point of contact on the contract was the Senior Employee.

In late February 2014, after the contract was awarded, the Acquisition Specialist, while on vacation, was asked to sign the Justification Document, which was prepared by the Senior Employee, as previously discussed. The Justification Document cites 41 U.S.C. § 253(c)(1) as the statutory authority on which the sole source award to the Headhunter was based.¹⁰⁹ This exception states that “[t]he services required are available from only one responsible source and no other type of service will satisfy the Census Bureau’s requirements.”¹¹⁰ Even though there was a signature block for a representative from the Director’s office to sign certifying the accuracy of the statements made in the Justification Document, the Justification Document was not signed by the Senior Employee or anyone else from the Director’s Office.¹¹¹ The Justification Document was posted online in late February 2014, along with Census’s Award Notice announcing the sole source award to the Headhunter.¹¹²

¹⁰⁹ Case File No. 15 at 1. The statutory authority cited to in the Justification Document, 41 U.S.C. § 253(c)(1), is now codified at 41 U.S.C. § 3304 (a)(1).

¹¹⁰ *Id.*

¹¹¹ Case File No. 15.

¹¹² Case File No. 86.

IX. The Headhunter Proposes Additional Candidates

On March 3, 2014, the Director e-mailed the Senior Employee requesting that she set up a conference call with the Headhunter, noting that “now that we have him on contract, [the Executive] should meet him (at least via phone).”¹¹³ The e-mail record reflects that the Senior Employee then scheduled a conference call involving the Executive, which was held on March 5, 2014.¹¹⁴ Also on March 3, the Headhunter’s tracking sheet indicates that Candidate Eight was proposed, but a note reflected that the Director believed he did not have “enough community outreach.”¹¹⁵ Candidate Eight was the first candidate to be proposed with an enforceable contract in place, though the agency would not post a vacancy announcement for the Decennial Position for over 200 days.¹¹⁶

On March 18, 2014, the Headhunter e-mailed both the Director and Executive a résumé and information on Candidate Nine.¹¹⁷ OIG did not locate a response from the Director or Executive to this e-mail, and the Headhunter followed up on March 24, inquiring whether either had had a chance to review the submission.¹¹⁸ The OIG did not locate an e-mail response to the Headhunter’s March 24 e-mail from either the Executive or Director, though the Headhunter’s tracking spreadsheet included the comment “No” under the “Resolution Start Date” heading.¹¹⁹

On March 26, the Headhunter proposed Candidate Ten, a senior executive with a large private company. The record shows that the Director and Executive had lunch with Candidate Ten on April 9,¹²⁰ but that he later declined to be considered further, citing what would be a significant pay cut to leave the private sector.¹²¹

X. The Headhunter Identifies Candidate Eleven

On May 5, 2014, the Headhunter e-mailed the Executive and Director a biography and résumé for Candidate Eleven,

Attached is the resume and bio [of Candidate Eleven.] She has very recently left [private sector company] to do something "meaningful". I discussed with her the salary range of the position. She is okay with that. She would be taking a major cut from what she was making at [private sector company] but salary is not her driving factor in this.¹²²

According to the résumé submitted by the Headhunter, Candidate Eleven had experience as a senior executive in the information science field and as a private sector consultant.¹²³ On the

¹¹³ Case File No. 13.

¹¹⁴ Case File No. 12.

¹¹⁵ Case File No. 89 (attachment).

¹¹⁶ *Id.*

¹¹⁷ Case File No. 40.

¹¹⁸ *Id.*

¹¹⁹ Case File No. 89 (attachment).

¹²⁰ Case File No. 75.

¹²¹ Case File No. 76.

¹²² Case File No. 43.

¹²³ Case File No. 72.

same day, the Executive wrote that “she is definitely worth talking to,”¹²⁴ and the Headhunter responded by noting that “I think she would be better served by coming to Washington for [a] face-to-face meeting rather than a soulless phone call.”¹²⁵

Two days later, on May 7, 2014, the Headhunter followed up with a second e-mail to the Executive, asking whether the Director had had a chance to review Candidate Eleven’s résumé, and stating that “[s]he has just left [private sector company] and we probably want to get her full attention before someone else does.”¹²⁶ Following this, the Senior Employee contacted Candidate Eleven to schedule a videoconference meeting with the Executive and Director, which appears to have taken place on May 23.¹²⁷ According to the Director, he believed Candidate Eleven “seemed like a very, very knowledgeable person in the area of IT because she’d been working at [private sector company] and had been leading some innovation and change there.”¹²⁸

The Director told the OIG that, after the meeting, he and the Executive “thought it might be good to get . . . some insights from her on what we were doing” with respect to data and IT practices.¹²⁹ The Executive told the OIG that she said to the Director,

Let’s bring her in, have her meet with the associate directors, get a sense of what we’re doing, and she can give us some feedback, because even if we end up not hiring her, she has this great expertise that we could probably take advantage of.¹³⁰

XI. Candidate Eleven Visits the Census Bureau

Shortly thereafter, in preparation for Candidate Eleven’s visit to Census later that month, the Senior Employee e-mailed a final agenda to nine individuals on Census’s leadership team and requested that each of them provide their latest biographies so that they could be given to Candidate Eleven.¹³¹ On the same day, the Senior Employee e-mailed the Executive edits to the Census FY 2015 Budget presentation that the Senior Employee would be sharing with Candidate Eleven for “background and overview purposes.”¹³²

Candidate Eleven visited the Washington, DC area over two days in June 2014 and spent her time meeting with senior executive officials from Census and the Department. Candidate Eleven’s visit was paid for by Census, and the arrangements were coordinated in part by the Senior Employee.¹³³ Candidate Eleven’s visit was not presented as being related to her potential candidacy for the Decennial Position, but as an informational briefing on the agenda sent to the

¹²⁴ Case File No. 23.

¹²⁵ Case File No. 43.

¹²⁶ Case File No. 45.

¹²⁷ Case File No. 58.

¹²⁸ Director Tr. at 2035-37.

¹²⁹ *Id.* at 2038-39.

¹³⁰ Executive Tr. at 1435-36.

¹³¹ Case File No. 61.

¹³² Case File No. 62; Case File No. 74.

¹³³ CMS Doc. No. 38; Director Tr. at 2054-56.

senior executive officials who were scheduled to meet with her.¹³⁴ At the time of the visit, a vacancy announcement would not be posted for over 100 days.

A. Candidate Eleven Participates in a Day of Activities at Census

On the first evening of Candidate Eleven's visit, she had dinner with the Director, Executive, and another senior executive official from Census who was then working in the decennial office.¹³⁵ The following day, according to the final agenda circulated by the Senior Employee,¹³⁶ Candidate Eleven met with the Executive from 8:00 to 8:15 and had lunch with the Director and Executive at noon. In addition to her morning and lunch meetings, Candidate Eleven took part in meetings with several members of Census's executive team throughout the day, which lasted for approximately 45-minute to 1-hour.¹³⁷ Several of the individuals who took part in those briefings would have a role in the selection process for the Decennial Position.¹³⁸ Table 5 below shows Candidate Eleven's schedule during her trip to Census and notes whether the individuals with whom she met had a role in the selection process for the Decennial Position.

Table 5. Candidate Eleven's Meetings

Meeting Time	Official who Met with Candidate Eleven	Have a Role in Selection Process?
8:00-8:15	Executive	Yes
8:15-9:00	Senior Executive Official 1	Yes ¹³⁹
9:00-10:00	Senior Executive Official 2	No
10:00-11:00	Senior Executive Official 3	No
11:10-12:00	Senior Executive Official 4	No
12:00-1:00	Director and Executive	Yes
1:10-2:45	Senior Executive Officials 5 and 6	No
3:15-4:15	Senior Executive Official 7	Yes ¹⁴⁰
4:15-5:00	Senior Executive Official 8	Yes ¹⁴¹
6:00-	Senior Appointee	Yes

Following Candidate Eleven's meetings during the day, the Director brought her to dinner with a senior political appointee at the Department of Commerce (Senior Appointee).¹⁴² According to the Senior Appointee, during the dinner, they discussed the challenges faced by Census, the Decennial Position, Candidate Eleven's reasons for being interested in public service, and her various skills.¹⁴³ The Senior Appointee told the OIG that he "meet[s] with lots of people that I'm constantly scoping out for possible positions," though he did not have dinner with any other

¹³⁴ Case File No. 20.

¹³⁵ Executive Tr. at 1546; Case File No. 26.

¹³⁶ Case File No. 61; Case File No. 20.

¹³⁷ Case File No. 29; Case File No. 20.

¹³⁸ Case File No. 20; Director Tr. at 2113-35.

¹³⁹ Director Tr. at 2202.

¹⁴⁰ *Id.* at 2216.

¹⁴¹ Director Tr. at 2198.

¹⁴² Case File No. 65.

¹⁴³ Senior Appointee Tr. at 540-46.

candidates for the Decennial Position.¹⁴⁴ As noted below, the Senior Appointee was the final selecting official of record for the Decennial Position.¹⁴⁵

B. The Purpose of Candidate Eleven's Visit

When the OIG asked the Director about the purpose of Candidate Eleven's visit, he stated that she was not brought to Census on a "recruiting trip" but to provide an informational briefing to Census.¹⁴⁶ The Director then told the OIG that, while the primary purpose of Candidate Eleven's trip to Census was to have her provide expertise, the secondary purpose of the trip was to evaluate her as a possible candidate for the Decennial Position.¹⁴⁷

The OIG also asked the Executive about the purpose of Candidate Eleven's trip, and she explained that it was "to take advantage of [Candidate Eleven's] expertise."¹⁴⁸ The Executive denied that there was a secondary purpose for the trip related to the Decennial Position, but admitted that Candidate Eleven spoke to her, the Director, and another senior official about the position when they took her out to dinner, noting that she thought Candidate Eleven was "trying to determine whether she wanted to apply or not."¹⁴⁹

The OIG presented this question to the Senior Employee as well, who noted she understood that the purpose of the visit was not related to Candidate Eleven's potential candidacy for the Decennial Position.¹⁵⁰ The Senior Employee stated that the Executive and Director told her that Candidate Eleven came to Census for the informational briefing.¹⁵¹

The OIG also asked the Senior Appointee whether the purpose of Candidate Eleven's visit was to meet with him and the Director to discuss the Decennial Position, to which he replied,

It was one of the reasons. I don't know if it was the only reason. That I don't know. I was just told, hey, you know, we've identified this person who, you know, might be a great asset to our organization given that it's a pretty senior position.¹⁵²

C. The Headhunter's Records Indicate that Candidate Eleven Had Received the Job

In June of 2014, one day after Candidate Eleven's visit to Census, the Headhunter e-mailed the Director's personal e-mail, asking,

Obviously I am quite interested in how things went. Could you drop me a note? Or should we set up a time to talk?¹⁵³

¹⁴⁴ *Id.* at 896-98.

¹⁴⁵ Case File No. 90.

¹⁴⁶ Director Tr. at 2004-07.

¹⁴⁷ *Id.* at 2133-35.

¹⁴⁸ Executive Tr. at 1486-89.

¹⁴⁹ *Id.* at 1549.

¹⁵⁰ Senior Employee Tr. II at 1232-36.

¹⁵¹ *Id.* at 1251-52, 1258-59.

¹⁵² Senior Appointee Tr. at 654-58.

¹⁵³ Case File No. 73.

The Director responded to the Headhunter's e-mail later the same day, explaining that "[i]t would be good to find a time for both [the Executive] and I to talk with you."¹⁵⁴ According to the e-mails provided by the Director to the OIG, it appears that this was the last communication between the Director and the Headhunter using the Director's personal e-mail account.

The Headhunter told the OIG that, after Candidate Eleven's visit, the Director told him that Candidate Eleven was "the one."¹⁵⁵ The Headhunter told the OIG that he interpreted this statement to mean that Candidate Eleven was the "top candidate" and "it was going to be hard for somebody to beat her."¹⁵⁶ The Headhunter admitted, however, that he understood that if someone better came along, the Director would hire that person instead of Candidate Eleven.¹⁵⁷

In an e-mail to the OIG, the Director stated,

I may very well have said "She's the one" to [the Headhunter.] I can't recall if I did, but I can't rule it out. However, it was intended to mean that we should move forward with the [Senior Executive Service] process. I am also sure that I made it clear to him that this was a highly competitive process, etc.¹⁵⁸

The Headhunter also told the OIG during an interview in July 2014, about one month after Candidate Eleven's trip to Census, that the Director had already told her that he wanted her "to take the job."¹⁵⁹

OIG: Where is [the hiring] process at now? Is there --

HEADHUNTER: The process is, they have -- uh, he has told the person [Candidate Eleven] he wants her to take the job. Uh, she can't start basically until the new year, which is fine by [the Director.] That worked out well with him. And, um, all ready to go.¹⁶⁰

The Headhunter also told the OIG that Candidate Eleven had planned to take off "the next three or four months" after resigning from her private sector job.¹⁶¹ He indicated that the timing of the new job for Candidate Eleven "was perfect," noting that the Director wanted to fill the position by 2015.¹⁶²

The second excerpt of the Headhunter's tracking sheet is included in Table 6 below. In the status column for Candidate Eleven, the Headhunter wrote "HIRED Start 1/1/2014,"¹⁶³ though he later told the OIG that he meant to write "1/1/2015."¹⁶⁴ Notably, the document's properties

¹⁵⁴ *Id.*

¹⁵⁵ Headhunter Tr. II at 281.

¹⁵⁶ *Id.* at 289-91.

¹⁵⁷ *Id.* at 291-93.

¹⁵⁸ CMS Doc. No. 48.

¹⁵⁹ Headhunter Tr. I at 493-94.

¹⁶⁰ *Id.* at 492-97.

¹⁶¹ *Id.* at 538-39.

¹⁶² *Id.* at 541-42.

¹⁶³ Case File No. 89 (attachment).

¹⁶⁴ Headhunter Tr. II at 101-03.

indicated that it was last modified in July 2014, three months before the vacancy announcement for the Decennial Position was eventually posted in late October 2014.

Table 6. Second Excerpt from Headhunter’s Tracking Sheet on Candidates¹⁶⁵

Candidate	Client	Date Sent	Sent To	Position	Resolution Start Date
[Candidate Eight]	US Census	March 3 2014	[the Director]		Not enough community outreach
[Candidate Nine]	US Census	March 18 2014	[the Director]		No
[Candidate Ten]	US Census	March 26 2014	[the Director]		Too expensive
[Candidate Eleven]	US Census	May 5 2014	[the Director]		HIRED Start 1/1/2014
[Candidate Twelve]	US Census	May 22 2014	[the Director]		No

When the OIG showed the Director the portion of the table represented above, he remarked, “I don’t know where [the Headhunter] got that. I haven’t the faintest idea what [he] was thinking.”¹⁶⁶ The Director told the OIG that “I did not tell [the Headhunter] at any time that [Candidate Eleven] would be hired.”¹⁶⁷ The Director did report, however, that he told the Headhunter that he did not need to continue sending him candidates.¹⁶⁸ After Candidate Eleven’s visit to Census, even though almost 70 days of performance remained on the contract, the Headhunter did not present any additional candidates to Census per the Director’s direction.¹⁶⁹

D. Census Posts a Vacancy Announcement

In September 2014, the Decennial Position became vacant.¹⁷⁰ Census publicly posted a job announcement for the position in late October 2014 and accepted applications through late November.¹⁷¹ Following its normal practice, Census provided the announcement to a group of diverse professional organizations and posted the announcement on social media sites.¹⁷² According to a Census staffing report, 21 individuals applied for the position.¹⁷³ The 21 candidates were evaluated by a human resources official, who determined which were minimally qualified, and advanced several to a panel of officials, one of whom previously met with Candidate Eleven.¹⁷⁴

After these evaluations, Candidate Eleven and one other candidate were forwarded to an “interview panel” comprising Census officials. Two of the three interview panel members had previously met with Candidate Eleven during the June trip. The interview panel advanced both of the candidates to the Executive and Director for an additional round of interviews.

¹⁶⁵ The table also indicates that Candidate Twelve was presented on May 22, before Candidate Eleven’s trip to DC, but did not progress any farther.

¹⁶⁶ Director Tr. at 2416-17.

¹⁶⁷ *Id.* at 2452-53.

¹⁶⁸ *Id.* at 2485-86.

¹⁶⁹ Headhunter Tr. I at 2085-90; Case File No. 89 (attachment); Director Tr. at 2460-65.

¹⁷⁰ Case File No. 69.

¹⁷¹ Case File No. 64.

¹⁷² CMS Doc. No. 97.

¹⁷³ Case File No. 70.

¹⁷⁴ CMS Doc. No. 97; see also Table 5.

The OIG's investigation found that Census's treatment of Candidate Eleven was different in several respects from how other candidates were treated by Census. Those differences are outlined in the table below.

Table 7. Comparison of Candidate Eleven to Other Candidates for the Decennial Position

Activity	Candidate Eleven	Other Candidates
Paid travel to Census	Yes	No
Meetings with Census officials with a role in the hiring process	Yes	No
Meeting with Senior Appointee	Yes	No
Opportunity to draft a report on Census for leadership ¹⁷⁵	Yes	No

E. Vacancy Announcement Delay

Even though the Director, in consultation with the Executive, had determined that new leadership was needed in the Decennial Position in September 2013, and despite the purported urgency set forth in both the Special Notice and Justification Document,¹⁷⁶ Census did not post a vacancy announcement for the Decennial Position until late October 2014. This is over one year after they determined that new leadership was needed and approximately nine months after publication of Census's acquisition documents.

When the OIG asked the Director why it took Census more than a year to post the vacancy announcement, he responded that he did not know why, suggesting only that "it takes a long time in the government to get things done."¹⁷⁷ The OIG asked the Director whether he had told anyone that he was willing to accommodate Candidate Eleven's schedule when posting the vacancy announcement, to which he replied, "I could have said that because it's been . . . delayed, she does have some flexibility in her schedule. So that should be okay."¹⁷⁸

F. Census's Decision to Not Select Candidate Eleven

Census did not ultimately select Candidate Eleven for the Decennial Position, opting for another individual not identified by the Headhunter.¹⁷⁹ As a result, the Headhunter was not paid under the terms of his contract.

¹⁷⁵ Director Tr. at 2005-06. After meeting with Census officials, Candidate Eleven was asked to prepare a report on the state of innovation and technology at the agency.

¹⁷⁶ Case File No. 15 at 2. The Justification Document stated that "the amount of time and funds required to fulfill this Executive Recruitment requirement by any other source that could not guarantee success would cause an unacceptable delay in the Census Bureau's ability to fulfill its mission." *Id.*

¹⁷⁷ Director Tr. at 1876-77.

¹⁷⁸ *Id.* at 2372-74.

¹⁷⁹ In response to a draft version of the OIG's report, the Director's private counsel requested that the OIG remove the portion of the report related to Candidate Eleven, as OIG's report "makes no findings concerning the Director's conduct following the award of the contract with the Headhunter." The OIG included this portion of the narrative in the report because it illustrates the Headhunter's work after a contract was in place, and suggests that Candidate Eleven received an advantage not given to other candidates. However, the OIG found insufficient evidence to conclude that Census officials violated federal hiring rules.

Candidate Eleven told the OIG that she was surprised and disappointed that she did not receive the position. The OIG had received information indicating that, because she believed that she would be offered the position, Candidate Eleven's significant other had found a job in the DC area (they lived in another region of the country) and she was preparing to sign a lease on a DC area residence. The OIG asked Candidate Eleven whether she had been led to believe by the Director or the Executive that she would be receiving an offer for the Decennial Position. Candidate Eleven told the OIG that she "preferred not to answer that" because she "did not want to get [anyone] in trouble."¹⁸⁰

The Director and Executive both reported being made aware of the OIG's investigation by Census employees interviewed as part of the investigation. For example, the Senior Acquisition Official told the OIG that, on August 14, 2014, he talked with the Executive and another senior official about his interview, which covered issues related to the Headhunter's contract.¹⁸¹ Soon after, on August 26, 2014, the other senior official with whom the Senior Acquisition Official spoke forwarded an OIG request for information on SES vacancy announcements to the Executive and another official, noting that he had "no more information currently about an IG investigation about the SES program, but . . . wanted you to be aware of the OIG's request."¹⁸²

Nevertheless, both the Director and Executive denied that the OIG's investigation had an impact on their deliberations about whom to select for the Decennial Position. The Director acknowledged that he and the Executive discussed the OIG's investigation when they were considering whether to pick Candidate Eleven for the position, but explained that the Executive asked him to think about who they would have selected if the OIG investigation had not occurred.¹⁸³ The Director told the OIG that he responded, "I'd pick [the person who was selected (over Candidate Eleven)]. . . . [That person] is obviously the best one."¹⁸⁴

¹⁸⁰ CMS Doc. No. 38.

¹⁸¹ Case File No. 93.

¹⁸² Case File No. 92.

¹⁸³ Director Tr. at 2823-24.

¹⁸⁴ *Id.* at 2825-28.

Chapter 3: Analysis and Findings

The evidence in this matter established that Census officials failed to comply with numerous rules and regulations during the procurement process. These findings are discussed in detail below.

I. The Acceptance of Voluntary Services from the Headhunter Implicates the Antideficiency Act

By Department policy, the Office of General Counsel makes determinations about whether employee actions constitute violations of the Antideficiency Act.¹⁸⁵ While the facts in this matter implicate the ADA, the OIG will provide relevant materials to the Office of General Counsel to make a determination regarding whether the ADA was violated. Nevertheless, the evidence related to the Director's acceptance of voluntary services for a period of three months before the contract was awarded implicates 31 U.S.C. § 1342, which prohibits federal employees from accepting services contributed on a voluntary basis.

According to the Director's e-mails, the Headhunter's business records, and their sworn testimony, the Headhunter searched for possible candidates for the Decennial Position and sent résumés to the Director for three months before the contract was awarded in mid-February 2014. In total, the Headhunter submitted at least seven candidates before the contract was awarded, and the Headhunter and the Director exchanged at least 25 e-mails and spoke on the telephone on several occasions regarding the Headhunter's search for candidates. Notably, the services rendered by the Headhunter before and after contract award were the same, which is reflected in the identical nature of the materials submitted by the Headhunter (Appendix A includes examples of the Headhunter's candidate submissions on his firm's letterhead both before and after contract award). The Headhunter received no compensation for his work activities during this time, and no enforceable contract existed that would have allowed him to be paid.¹⁸⁶ As such, the Headhunter's work during this time constituted voluntary services.

The record also reflects that the Director actively accepted the Headhunter's services and encouraged him to continue providing those services in the absence of an enforceable contract. In response to a draft version of this report from the Director's private counsel, he contested this conclusion, noting that "the Director did not ask the Headhunter to begin sending

¹⁸⁵ The Antideficiency Act places ultimate responsibility for determining whether a violation of that law has occurred and then reporting any violation with the "head of the agency." Accordingly, the Department's Accounting Principles and Standards Handbook states that "a determination concerning liability" under the ADA "is within the province of the Department's Office of General Counsel."

¹⁸⁶ The record also reflects that the Director understood that the services he was receiving from the Headhunter were voluntary in nature. In response to the OIG's draft report, the Director's counsel noted that the Director had no expectation "that any payment would be made to the Headhunter for any services if the Director identified a candidate before a contract was awarded." Appendix D. Regardless of whether the Headhunter actually could have been paid, the Director's assertion about his belief indicates that he understood that the services being contributed were voluntary.

resumes,” and that the Headhunter’s submissions prior to contract award were “unsolicited.”¹⁸⁷ However, this assertion is belied by the evidence. First, on October 21, 2013, the Director sent an e-mail to the Headhunter, writing “I determined that we can engage your services,”¹⁸⁸ after which the Headhunter began proposing candidates. Second, the Director did not tell the Headhunter to stop sending résumés—he encouraged him to continue providing his services by evaluating the candidates and providing feedback on the candidates submitted. For example, on November 17, one day after receiving the Headhunter’s e-mail about Candidate One, the Director responded, stating “I’m not sure if he is the one, but it’s an amazing start. I’ll share this with a few folks and get back with you.”¹⁸⁹ Later, on December 8, 2013, after the Headhunter proposed Candidates Two and Three, the Director wrote that “They are close, I think the best is [Candidate Three.] However, I’m looking for someone who has a little more experience in incorporating IT into operational practices. That is, a little more of an operations research background in the IT arena.” In another example, on February 10, 2014, the Headhunter e-mailed the Director stating that “I’d like to keep the search moving, but I need a bit of feedback,” referring to several candidates he had already proposed. The Director responded by providing his feedback on the candidates, writing “[Candidate Six] is a good academic, but I don’t think she has the management experience to do the job I’m looking at.”¹⁹⁰ The Director’s feedback to the Headhunter demonstrated that he understood that the Headhunter had started providing executive search services, and that he was accepting and evaluating the Headhunter’s work product and providing him with feedback to encourage him to continue the search.¹⁹¹

The evidence also suggests that the Director may have accepted the Headhunter’s services while knowing it was not allowed. The Director’s request that the Headhunter switch from government to personal e-mail suggests that he understood that working with the Headhunter prior to contract award was improper. Further, when the Director requested the switch to personal e-mail, he provided his reasoning—his government e-mail “was public information,”

¹⁸⁷ Even in the case where services are unsolicited, their acceptance would still fall within the scope of the definition of “voluntary services” as defined by Department of Commerce policy. Specifically, Departmental Administrative Order (DAO) 202-311, Section 2, defines a voluntary service as a “service provided by any person on their own initiative without a formal request.”

¹⁸⁸ Case File No. 55.

¹⁸⁹ Case File No. 36.

¹⁹⁰ Case File No. 73.

¹⁹¹ In response to a draft version of this report, the Director’s counsel argued that “certainly it cannot be improper acceptance of ‘voluntary services’ . . . to reach out and actively solicit names for possible positions.” However, the evidence in the records indicates more than a casual or fleeting acceptance of possible candidates for the Decennial Position. First, the interactions between the Headhunter and the Director were not of a casual nature—they took place within the context of a potential contract being awarded. While the Headhunter was proposing the first seven candidates, the Senior Employee and the Acquisition Specialist were working on creating a sole source award to him. Second, the candidates were not being proposed by a personal friend or colleague, but by someone whose business it is to propose candidates for payment. The Headhunter is routinely paid for such proposals, and he told the OIG that he had an expectation that he would have been paid if he had found the right candidate prior to having a contract awarded. Headhunter Tr. at 1520-54.

indicating his concern that their communications could be publicly discovered.¹⁹² In fact, when the OIG asked the Director if he switched to the use of personal e-mail because Census did not have a contract in place, he acknowledged that “it was about that level.”¹⁹³ On December 8, 2013, after the Director e-mailed the Headhunter to inform him that he had a personal e-mail account, he exchanged at least 25 e-mails with the Headhunter prior to the launch meeting for the contract. After the launch meeting took place, the Director’s e-mail exchange with the Headhunter switched back to government e-mail and ceased over personal e-mail for several months. Thus, the facts demonstrate that the Director understood that his conduct may have been improper.

Accordingly, the totality of the evidence suggests that the Headhunter provided voluntary services for a period of three months and that the Director accepted those services while understanding it to be improper. Although the Office of General Counsel is authorized to determine whether a violation occurred, the evidence clearly implicates the Antideficiency Act.

II. The Director Did Not Comply with Department Policy by Receiving Services from the Headhunter Without a Contract in Place

The evidence established that the Director created an unauthorized commitment by accepting services from the Headhunter without a contract in place and thus did not comply with Department of Commerce acquisition policy.¹⁹⁴ The Commerce Acquisition Manual (CAM) states that unauthorized commitments occur when the Department “accepts goods or services in the absence of an enforceable contract entered into by an individual with delegated contracting authority.”¹⁹⁵

As described in the previous section, the evidence showed that, through the Director’s actions, the Census Bureau accepted services from the Headhunter in the absence of an enforceable contract. As a result, we concluded that Census did not comply with the plain language of Section 1.1 of CAM 1301.602.

Section 2.3 of CAM 1301.602 explains that “[u]nauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.”¹⁹⁶ In making this finding, we note that the Director apparently understood that the Headhunter’s work without a contract was not allowed. In his OIG interview, the Director explained that it was his awareness that the contract had not been awarded that

¹⁹² In response to the OIG’s draft report, the Director’s counsel explained that the reason he requested the switch to personal e-mail was “to comply with the rules governing emails,” and not to attempt to hide improper conduct. The counsel explained that his communications with the Headhunter prior to having a contract in place were not official government business. The OIG does not credit this explanation. The Director and the Headhunter did not discuss personal matters in the e-mails reviewed by the OIG, only recruiting for the Decennial Position. In fact, in the response to the OIG’s draft report, the Director’s counsel noted that “the relationship between the Director and the Headhunter was purely professional.” Appendix D. Further, the communications dealt with a hiring effort for a critical Census position, which is official government business.

¹⁹³ Director Tr. at 1171.

¹⁹⁴ FAR 1.602 defines an “unauthorized commitment” in a different manner than the Department policy, and OIG found that the Director’s actions did not meet the requirements specified in that section.

¹⁹⁵ CAM 1301.602, § 1.1.

¹⁹⁶ CAM 1301.602, § 2.3.

prompted him to request that the Headhunter communicate with him using personal e-mail, indicating that he understood that his acceptance of the Headhunter's services without a contract in place was not appropriate.¹⁹⁷

III. The Director Did Not Comply with Department Policy and NARA Guidance by Using Personal E-mail to Conduct Official Government Business

Department of Commerce policy prohibits the use of personal e-mail for official Department business. A Department memorandum titled "Use of Personal E-mail for Official Communication Prohibited" states in pertinent part,

DOC employees and contractors are reminded that all official DOC e-mail communications must be made using their assigned DOC e-mail account. Official DOC e-mail communications are defined as any transfer of . . . writing . . . for the intended purpose of supporting DOC missions and objectives. *Use of personal e-mail accounts for official communications is prohibited.*¹⁹⁸

As discussed above, from December 9, 2013 through February 28, 2014, the Director exchanged at least 25 e-mails with the Headhunter using his personal e-mail account. In all of these e-mails, the Director and Headhunter discussed various candidates the Headhunter had proposed in order to fill the Decennial Position at the Census Bureau. According to Census, the Headhunter's work was "critical to the Bureau's mission."¹⁹⁹ Thus, the evidence established that these e-mail communications were "for the intended purpose of supporting DOC missions and objectives," and that the Director's use of his personal e-mail to conduct this official business violated Department policy.

In making this finding, we note that the evidence showed that the Director's intent was to avoid the very disclosure principles supporting the Department's e-mail policy. For instance, when the OIG asked the Director about his use of personal e-mail and whether it would ever be permissible, the Director replied, "I wouldn't think so."²⁰⁰ In his December 9, 2013 e-mail to the Headhunter, the Director stated that the reason he wanted to move their discussion to his personal e-mail was because his "government e-mail is public information."²⁰¹ As noted above, the Director told the OIG that he was concerned about these e-mails being publicly disclosed because Census did not have a contract in place with the Headhunter.²⁰² The OIG concluded that the Director understood that his government e-mail could be disclosed to the public, and took steps to avoid that.

¹⁹⁷ Director Tr. at 1258-59.

¹⁹⁸ Case File No. 66, Mem. *Use of Personal E-mail for Official Communication Prohibited*, May 28, 2013, available at <https://connection.commerce.gov/policy/20140528/policy-memos> (emphasis added).

¹⁹⁹ Case File No. 16 at 1 ("The Census Bureau needs support services in the search of candidates to fill prospective Senior Executive Level positions whose fulfillment is critical to the Bureau's mission.").

²⁰⁰ Director Tr. at 1140-41.

²⁰¹ Case File No. 34.

²⁰² Director Tr. at 1258-59.

In addition, the National Archives and Records Administration provides guidance to federal agencies and employees on the management and preservation of federal records.²⁰³ NARA guidance recognizes that “agency employees should not generally use personal e-mail accounts to conduct official agency business” unless authorized to do so under official agency policy (for example, in an emergency).²⁰⁴ According to the guidance, when an employee does use his or her personal e-mail to conduct official agency business, a federal record may be created.²⁰⁵ NARA guidance further provides that, if an employee creates a federal record, the employee who created the record must ensure that it is “captured and managed in accordance with agency recordkeeping practices.”²⁰⁶

In this case, there is no dispute that the Director’s use of personal e-mail was not authorized under Department policy. Moreover, the evidence indicates that the Director’s e-mails with the Headhunter constituted federal records because they involved the transaction of government business and were appropriate for preservation as evidence of the decisions, procedures, operations and other activities of the Census Bureau. While the Director pointed to his decision to retain the e-mails as evidence of his desire to maintain them for recordkeeping purposes, he made no attempt to ensure that they were “captured and managed” in accordance with the Department’s policies.²⁰⁷ Accordingly, the evidence showed that the Director failed to follow NARA guidance by using his personal e-mail to conduct official government business and failed to manage those records properly.

In making these findings concerning the Director’s conduct related to this procurement, we note that we credited his statements to the OIG that he was motivated by a desire to find the best person for the Census Bureau and to conduct the search in a cost-effective manner. We also note that the Director cooperated fully with the OIG’s investigation, including in his responses to questions during an investigative interview and providing e-mails from his personal account upon the OIG’s request.

IV. Census Did Not Comply with CICA and the FAR When It Awarded a Sole Source Contract to the Headhunter

Both CICA and the FAR mandate that federal contracts be awarded based on full and open competition unless a statutory exception applies. The statutory exception Census relied on to justify its sole source award to the Headhunter was that the services required were “available from only one responsible source and no other type of service [would] satisfy the Census

²⁰³ 44 U.S.C. § 3301. “Federal records” are defined as “documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.”

²⁰⁴ NARA Bulletin 2013-03.

²⁰⁵ *Id.*

²⁰⁶ *Id.* In November 2014, the Federal Records Act was amended to require that federal employees who create a federal record using a non-official electronic messaging account forward a complete copy of the record no later than 20 days after the original creation or transmission of the record. See 44 U.S.C. § 2911 (discussing same). However, this law was not in effect during the time of the Director’s e-mail exchange with the Headhunter.

²⁰⁷ Director Tr. at 1221-22.

Bureau's requirement."²⁰⁸ There is no evidence that the Census Bureau rejected any firms as not "responsible,"²⁰⁹ and therefore, the sole issue before the OIG was whether the headhunting services sought by Census were so specialized that the Headhunter was the only firm capable of providing those services.

The overwhelming weight of evidence contradicts Census's purported justification that the Headhunter was the only firm that could provide the necessary recruiting services. As discussed in more detail in Section V below, the Senior Employee's actions had the effect of preventing the competition required by CICA and the FAR. When the OIG compared the Senior Employee's determinations about the qualifications of the other offerors with their submissions, it appeared that the Senior Employee acted with the intent to avoid the competitive process.

The services Census was seeking—executive search services—are widely available in the commercial marketplace. Consistent with this fact, both the Director and Executive told the OIG that they believed there were other headhunting firms capable of performing the search. The Director stated that the reason he recommended the Headhunter was because he had worked with him previously and knew that he would work on a contingency-fee basis.²¹⁰ According to the Director, his recommendation was not based on any unique skills or experience. To the contrary, when asked whether other headhunting firms could have performed the search, the Director stated,

Yeah, we could -- we could have hired [name of headhunting company Census awarded a sole source contract to in 2011], for example, and tried them again. I mean, there's lots of search companies.²¹¹

The Executive stated in her OIG interview that the Headhunter was attractive because he was willing to perform the work on a contingency-fee basis, not because he possessed any unique skills or capabilities.²¹² Like the Director, when the OIG asked whether she believed other firms were capable of performing the search, the Executive responded "[y]ou know, presumably. I mean, there's a lot of headhunters out there."²¹³

²⁰⁸ Case File No. 15 at 1; see also Case File No. 16 at 2 (citing CICA and FAR 6.302-1).

²⁰⁹ "Responsible" is a term of art in federal government contracting and is defined at FAR 9.104-1.

²¹⁰ Director Tr. at 182-83; 218-19.

²¹¹ *Id.* at 305-307.

²¹² Executive Tr. at 248-52. We note that, while the nature of his fee structure could be a factor in the government's consideration of cost, it is irrelevant to its consideration of whether the firm is the only source capable of performing the work. Even if his contingency-fee structure were a consideration in the capability determination, the OIG found no evidence that this fee structure was unique. Indeed, Census stated in the Justification Document that the Headhunter would "employ the standard industry practice of 25 percent fee, based on the value of the salary of the recruitment," thereby affirmatively representing that there was nothing special or "unique" about his fee. Furthermore, at least one of the firm's found by the Acquisition Specialist (Firm E) also appeared to work on a 19 percent contingency fee according to its GSA Schedule contract. So while the Headhunter's 25 percent contingency-fee structure may have presented the "best value" to the Government (something Census will never know since it failed to compete the work or impartially consider other potential offerors), it does not provide support for the exception Census used to justify its sole source award to the Headhunter.

²¹³ *Id.* at 676-77.

We also note that testimony from the Headhunter himself undermines Census's justification that his firm was the only firm capable of conducting the search. In particular, when asked why the Director picked him to perform the search, the Headhunter told the OIG that he believed other firms could "probably" provide the same services, but the Director knew that he would keep the search quiet.²¹⁴

Moreover, as described above, the Acquisition Specialist identified six firms to the Senior Employee that she believed would be "a good fit" to meet Census's needs.²¹⁵ Although the Senior Employee rejected all six of these firms as incapable, the OIG's analysis established that at least three of them were capable of performing the search. As discussed in more detail below, these three firms had demonstrated experience conducting executive-level searches in the statistical, survey, research and education fields and unlike the Headhunter, had performed executive recruitment searches for the federal government. (The OIG's review of the evidence suggested that the Senior Employee did not evaluate these six firms impartially and without preference, which is discussed in greater detail below.)

Likewise, the OIG's analysis of the seven firms that submitted capability statements in response to Census's Special Notice established that at least two of those firms were capable of performing the executive search for Census. As discussed in more detail below, both of the firms the Senior Employee rejected had demonstrated extensive experience conducting executive-level recruitment in the statistical, survey, research and education fields, including for the federal government. (As with the Senior Employee's rejection of the six firms, the OIG's review of the evidence suggested that the Senior Employee did not evaluate these seven firms impartially and without preference.)

While the OIG's analysis established that at least five of the thirteen other firms were capable of performing the recruitment services, we also note that neither the Justification Document nor contract file supports Census's contention that the Headhunter was the only source capable of performing the search. The evidence showed that the Justification Document contained inaccurate and unsupported statements, and the contract file—which contained only the Headhunter's one-page "capability statement" and a two-page LinkedIn profile—did not contain sufficient information about the Headhunter to support Census's claim that he was the only source capable of performing the search.

Taken together—the commercial nature of the services being acquired, the testimony from the Director, Executive, and Headhunter, the OIG's identification of at least five other firms that could have performed these services, the inaccuracies in the Justification Document, and the insufficiency of the contract file—the evidence strongly supports that the Headhunter was not the only firm capable of conducting Census's search for the Decennial Position. The record therefore refutes Census's sole justification that the services required were "available from only one responsible source and no other type of service [would] satisfy the Census Bureau's requirement." Because Census did not cite a valid exception to CICA's requirement that federal contracts be awarded based on full and open competition, we found that Census's award of the contract to the Headhunter did not comply with CICA and the FAR.

²¹⁴ Headhunter Tr. I at 1820-21; 2207-08

²¹⁵ Acquisition Specialist Tr. at 436-38.

V. The Senior Employee Did Not Comply with Federal Regulations in the Procurement Process that Led to the Contract Award to the Headhunter

Federal regulations require that employees conduct government business in an impartial manner and avoid preferential treatment. The Standards of Ethical Conduct for Employees of the Executive Branch include basic obligations of public service, which require that:

(1) employees put forth honest effort in the performance of their duties; and (2) employees act impartially and not give preferential treatment to any private organization or individual.²¹⁶

Similarly, in the procurement context, the FAR provides that “[g]overnment business shall be conducted in a manner above reproach and . . . with complete impartiality and with preferential treatment for none.”²¹⁷

In this case, the evidence showed that the Senior Employee failed to comply with these provisions throughout the procurement process.²¹⁸ In making this determination, we note that there is no evidence that the Senior Employee knew or had a previous relationship with the Headhunter, and she did not appear to be motivated by intent to improve his prospects by providing him with a business opportunity. To the contrary, we concluded that she took these actions because she believed that the Executive and the Director wanted the contract awarded to the Headhunter and she was simply affecting their desired outcome. The OIG also considered the fact that the Senior Employee was not an expert in contracting rules.²¹⁹ However, as described below, the OIG found that:

- (1) the Senior Employee did not put forth honest effort or act impartially in evaluating the six firms identified by the Acquisition Specialist when she rejected at least three of them as not capable of performing the work;
- (2) the Senior Employee did not put forth honest effort or act impartially in evaluating the seven firms that submitted capability statements in response to Census's Special Notice when she rejected at least two of the firms as not capable of performing the work; and

²¹⁶ 5 C.F.R. § 2635.101(b)(5), (8).

²¹⁷ FAR 3.101-1.

²¹⁸ In response to the OIG's draft report, the Senior Employee's counsel disputed that she had steered the contract to the Headhunter, explaining that “the Senior Employee was told what to do by her direct supervisors, and she appropriately followed that direction to the best of her ability.” However, when the OIG asked the Executive about the nature of her instructions to the Senior Employee concerning the award of the contract to the Headhunter, she stated that “I didn't tell her she had to do it. I said, here's a person that we wouldn't have to pay; go work with Acquisitions and see if there's a way that we can do this.” Executive Tr. at 499-502. The Director testified that, after learning that seven firms had submitted capability statements, he told the Senior Employee to “just do what's right in dealing with this.” Director Tr. at 1724-25. The OIG found these statements to be credible and found no evidence that either had asked or implied that she should take improper actions to ensure the Headhunter would receive the award. In fact, when the OIG asked the Senior Employee whether she felt any pressure to reject the seven firms that submitted capability statements, she reported that she did not. Senior Employee Tr. I at 1593.

²¹⁹ When the OIG asked the Senior Employee whether she was familiar with the rules concerning sole source contracts, she responded, “No, I'm not the attorney for the agency.” Senior Employee Tr. I at 185.

- (3) the Senior Employee acted with preference towards the Headhunter by relying on assertions from a Justification Document that had been used in a previous procurement to bolster his capability and ensure that he would receive the contract.

The Senior Employee told the OIG that she rejected the six firms suggested by the Acquisition Specialist as not capable of performing the work because they did not have the experience or expertise necessary to meet the Census Bureau's requirement—specifically, that “[t]he selected contractor must have extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical/survey/research and education field, preferably for the public sector.”²²⁰ When the OIG asked the Senior Employee how she conducted her evaluation of these firms, she reported that she “went to the links” in the Acquisition Specialist's email.²²¹ As noted above, the Senior Employee did not document her evaluation process or its conclusion in writing.

As discussed previously in the report, the OIG also reviewed the GSA supply schedule documents and archived websites for the six firms that the Senior Employee evaluated and found that at least three demonstrated that they were capable of fulfilling Census's requirement, and that one of which—Firm D—appeared to have extensive experience in recruiting senior executives in the field of statistics.

²²⁰ Senior Employee Tr. I at 1680, 1683-85, 1688-89; Senior Employee Tr. II at 123-31 (quoting Special Notice, Case File No. 16).

²²¹ Senior Employee Tr. I at 1126-28.

Table 8. Comparison of Experience Among Firms D, E, F, and the Headhunter

Firm	Representative Searches Completed in the “Statistical / Survey / Research and Education Field”	Experience with the Federal Government
Firm D	<ul style="list-style-type: none"> • Searches completed in the field of statistics, including: <ul style="list-style-type: none"> - Chief Statistician, GAO²²² - Director, Bureau of Transportation Statistics at Department of Transportation (DOT) • Searches completed in the field of research/quantitative sciences, including: <ul style="list-style-type: none"> - Director of Scientific Programs, NOAA - Chief Scientist, GAO - Chief Economist, GAO • GSA federal supply schedule listed “Statistics” labor category 	<ul style="list-style-type: none"> • Conducted searches for multiple federal government agencies, including: <ul style="list-style-type: none"> - Department of Commerce (NIST, NOAA, USPTO) - Department of Health and Human Services - NASA - Transportation Security Administration - SEC
Firm E	<ul style="list-style-type: none"> • GSA federal supply schedule listed “Statistics” labor category for placing executives and senior staff²²³ 	<ul style="list-style-type: none"> • U.S. Fish and Wildlife Service
Firm F	<ul style="list-style-type: none"> • Searches completed at higher education institutions, local governments, and healthcare organizations • GSA federal supply schedule listed “Statistics” labor category 	Conducted searches for multiple federal government agencies, including: <ul style="list-style-type: none"> • IRS • DHS • DOD
Headhunter	<ul style="list-style-type: none"> • CEO of a medical research company • Vice President of Survey Research for a consulting firm • Director, Survey Research for a research/consulting company • Chief medical official for a pharmaceutical company 	<ul style="list-style-type: none"> • None

Given the experience of the three firms in the “statistical / survey / research and education field” cited above, if the Senior Employee had conducted an objective review, she could not have reasonably concluded that all were incapable of conducting the search for Census. Further, the fact that the Senior Employee did not memorialize her evaluation in writing and could not

²²² In response to the OIG’s draft report, the Senior Employee’s counsel claimed that this position was not listed on the firm’s website in November 2013 when the Senior Employee purportedly conducted the review. Although the OIG was not able to obtain a screenshot of Firm D’s website from November 2013, the OIG found the position listed on Firm D’s website both before (September 2013) and after (December 2013) that time.

²²³ In response to the OIG’s draft report, the Senior Employee’s counsel noted that simply because a recruiting firm had a specific billing category for recruiting for statistical positions that did not demonstrate that the firm was capable, asserting that Census required “that the firm have actually placed individuals in executive-level statistics positions.” However, the Special Notice requires that the contractor have “experience and expertise in the area of recruiting executive level candidates for and within the statistical / survey / research / and education field, preferably for the public sector.” It does not require that firms must have placed individuals in “executive-level statistics positions.” Therefore, the OIG credited Firm E for meeting this element of the requirement.

describe her methodology in any detail suggests that her review was not thoroughly carried out with “honest effort.”²²⁴

Similarly, the Senior Employee rejected the seven firms that submitted capability statements in response to Census’s Special Notice, finding all to be incapable of performing the search. Unlike the previous review, the Senior Employee memorialized this evaluation in a document titled Technical Assessment. In that document, she wrote that all seven firms failed to provide evidence of “extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical, survey, and research and education fields, preferably for the public sector.”²²⁵ The Senior Employee also wrote that none of the seven firms provided “information related to having a proven record of accomplishment for networking, attracting and recruiting the best possible candidates within a high quality statistical, social science research, not for profit, and public interest background.” The Senior Employee’s Technical Assessment also stated that none of the seven firms were capable of “complet[ing] the work effectively and within the short time frame.”²²⁶

As shown in the table below, the OIG’s review of the seven firms’ submissions found that two of them, Firms 5 and 7, had conducted executive searches in the fields set forth in Census’ requirement and had demonstrated experience that was at least comparable to the Headhunter’s.

²²⁴ In the response from the Senior Employee’s counsel, she claimed that the Headhunter “offered a lower price than any other vendor.” Price is irrelevant to the consideration of whether a firm is capable of meeting the Census Bureau’s requirement. But even if it were relevant, the claim that the Headhunter offered the lowest price is not supported by the evidence. The OIG’s review revealed that Firm E charged 19 percent of the selectee’s salary, as opposed to the Headhunter’s 25 percent.

²²⁵ Case File No. 17.

²²⁶ *Id.* As discussed, Census’s statements regarding “immediate need” and “within the short time frame” are unsupported in light of the delay in posting the vacancy announcement.

Table 9. Comparison of Experience Among Firms 5, 7, and the Headhunter

Firm	Representative Searches Conducted in the “Statistical / Survey / Research and Education Field”	Experience with the Federal Government
Firm 5²²⁷	<ul style="list-style-type: none"> • Director for a senior analytics position at the World Bank • President and CEO for large nonprofit organization promoting standards and guidelines for U.S. industry • CFO at large state university foundation • President at large public university • CEO at nonprofit medical research and advocacy organization 	<ul style="list-style-type: none"> • CFO, Director of Risk Management, and Director for Trading and Markets, SEC • CIO and Director of Communications, U.S. Department of Education • Inspector General-Audit and Chief Administrative Officer, U.S. House of Representatives • Financial Economist and Lead Economist VII, Comptroller of the Currency
Firm 7	<ul style="list-style-type: none"> • Associate Director for Risk Science, Intelligence & Prioritization, FDA • Consumer Insights Analysts and Category Managers for “Big Data” analytics company • Statistical modeling analyst and manager positions at a consulting company • Vice President, Technology, Engineering, and Economic Analysis for a national service organization representing nonprofit electric cooperatives 	<ul style="list-style-type: none"> • Multiple Directors for the IRS, including Director of Security and Director of Learning and Education • Chief Learning Officer and Auditor, Human Capital, GAO • Director of Security Standards and Evaluation, IRS • Numerous senior executive-level placements for U.S. DoD agencies
Headhunter	<ul style="list-style-type: none"> • CEO of a medical research company • Vice President of Survey Research for a consulting firm • Director, Survey Research for a research/consulting company • Chief medical official for a pharmaceutical company 	<ul style="list-style-type: none"> • None

Given the extensive experience of Firms 5 and 7 in recruiting senior executives, recruiting within the relevant fields, and for the federal government, the OIG concluded that the Senior Employee did not act impartially and without preference when she rejected these firms as being incapable of conducting the search. As noted in the introduction to this section, the Senior Employee told the OIG that she is not an expert in contracting and is not familiar with the rules associated with sole source awards. While the OIG acknowledges that this may be the case, specific knowledge of contracting law was not required to conduct an impartial review. The Senior Employee is an experienced federal employee who is trained in [REDACTED]. Her background and education suggests she was capable of thoroughly and objectively evaluating the 13 firms to determine whether they were capable of performing the executive search for Census, which she was tasked by her supervisor to do. As a federal employee, the ethical standards required that she perform her duties in accordance with these rules, and the OIG concluded that she did not.

²²⁷ In response to the OIG’s draft report, the Senior Employee’s counsel noted that several of the positions listed in this table are not “high-level statistics” positions. As noted in footnote 223 above, however, Census’s requirement as stated in the Special Notice was not having filled “high-level statistics” positions, but rather having expertise within several areas, including the statistical, survey, research, and education fields.

In addition, the record shows that she gave preferential treatment to the Headhunter by relying on assertions from a Justification Document that had been used in a previous procurement to bolster his capability. This document repeatedly noted that the Headhunter was uniquely qualified based on his “proven record of accomplishment” and “proven . . . success rate.”²²⁸ However, there is no evidence that the Senior Employee—or anyone else at Census—had information regarding the Headhunter’s “proven record of accomplishment” or “success rates.”²²⁹ When the OIG asked the Senior Employee about these statements, she admitted that she had no specific knowledge of the Headhunter’s success rates, but instead, knew only from the Executive and Acquisition Specialist that he had performed recruiting work for two statistical survey research organizations and had been recommended by the Director.²³⁰ The OIG found that there was no publicly available information (such as a company website) from which the Senior Employee could have gained this information, the Senior Employee did not have any previous working relationship with the Headhunter, and she did not call the Headhunter’s references or discuss these topics with him.²³¹ The Director, Executive, and Acquisition Specialist—the only other individuals who could have provided the information contained in the Justification Document—all confirmed to the OIG that they were not aware of the Headhunter’s record of accomplishment or success rates and could not have been the source of those assertions.²³² The inclusion of these unsupported statements suggests that the Senior Employee gave preferential treatment to the Headhunter in order to avoid the competitive process and ensure that he would receive the award.²³³

The record also shows that an inaccurate assertion was made related to the urgency and immediate need for executive search services. The Special Notice and Justification Document both cited Census’s “immediate need” for the Headhunter, noting that an “unacceptable delay” would result if Census used “any other source.”²³⁴ However, as previously noted, Census did not post a vacancy announcement for the Decennial Position until approximately nine months after these documents were published, suggesting that this language was also included to give undue preference to the Headhunter over the other firms.

These inaccurate and unsupported statements appeared to originate from the previous 2011 sole source justification. Indeed, the Justification Document supporting the Headhunter’s sole source award is virtually identical to the justification written for a different headhunting firm awarded a sole source contract by Census in 2011 for virtually the same services.²³⁵ The

²²⁸ Case File No. 15.

²²⁹ The OIG is not opining on the truth or validity of these statements, only that the Senior Employee and Census officials did not have any basis to assert them.

²³⁰ Senior Employee Tr. I at 1223-25; Senior Employee Tr. II at 500-01.

²³¹ Senior Employee Tr. II at 549-52.

²³² Director Tr. at 422-24; 1480-99; Executive Tr. at 403-05; 412-14; Acquisition Specialist Tr. at 2021-33; 2061-68.

²³³ The OIG found the unsupported statements concerning the Headhunter’s “proven record of accomplishment” particularly troubling in light of the fact that the Senior Employee expressly rejected the seven firms who had submitted capability statements on the grounds that they did not have such a “proven record of accomplishment.” Case File No. 17. In fact, many of the firms that submitted capability statements submitted voluminous proposals supporting their past performance records and capabilities, whereas the only information the Senior Employee had from the Headhunter was his one-page capability statement and his two-page LinkedIn profile.

²³⁴ Case File No. 16 at 1; Case File No. 15 at 2.

²³⁵ Compare Case File No. 15 with Case File No. 83. As noted above, the OIG did not review the 2011 sole source award made to a different headhunting firm.

“proven record of accomplishment” and “success rate” assertions discussed above appear to have been lifted verbatim from the sole source justification used in the 2011 procurement. Moreover, in describing how the Headhunter will conduct the search, the Justification Document purports to describe the Headhunter’s “established business model” of “dividing the search into five phases” and then lists those five phases.²³⁶ According to the 2011 sole source justification, the headhunter that was awarded the sole source contract in 2011 had the same “established business model” with the identical “five phases” as the Headhunter here.²³⁷ When the OIG asked the Senior Employee about this, she confirmed that the only part of the Headhunter’s business model she could recall discussing with him was his fee²³⁸ (which the Justification Document noted is the “standard industry practice of 25% fee, based on the value of the salary of the recruitment”).²³⁹ It seems clear that the Senior Employee simply cut and pasted this language directly from the 2011 justification document and made no effort to distinguish the Headhunter’s “proven record of accomplishment,” “success rate,” or “established business model” from that of the headhunting firm the Census Bureau awarded a sole source contract to in 2011.

Furthermore, the “Unique Qualifications” section of the Justification Document—which purports to describe why the Headhunter has qualities so different from other headhunting firms that he is the *only source capable* of performing the search—is virtually identical to the “Unique Qualifications” used to describe the other headhunting firm in the 2011 procurement. Indeed, both justification documents claim that the headhunting firms,

undertake[] nationwide searches for a wide variety of organizations, including leading universities, research institutions, academic medical centers, foundations, cultural institutions, economic development organizations, human service agencies, and national advocacy groups. Most [of both headhunting firms’] clients [have] ties to education and science . . . as well as with socially responsible companies. These skills and experience are determined to be a perfect fit for this Government executive recruitment requirement. [Both headhunting firms’] approach to [executive recruitment] searches is simple but disciplined. [Both firms’] first step is to spend a great deal of time with the client, getting to know the organization, and creating through a collaborative process, a profile of the ideal candidate. [Both firms’] search process emphasizes in-depth interviewing and reference checking of candidates along with a thoughtful analysis of the fit between the client organization and candidate. The Census Bureau is convinced that this exact approach will result in a positive and successful outcome.²⁴⁰

Thus, contrary to justifying the sole source award to the Headhunter by demonstrating his uniqueness, it appears that the Senior Employee did not put forward honest effort, but instead, simply lifted these statements directly from the 2011 justification. (Appendix B to this report

²³⁶ Case File No. 15.

²³⁷ Case File No. 83.

²³⁸ Senior Employee Tr. II at 852-58.

²³⁹ Case File No. 15 at 2, Fair and Reasonable Cost. The “Market Research” and “Other Supporting Facts” sections of the Justification Document are also identical to the 2011 justification. *Compare* Case File No. 15 with Case File No. 83.

²⁴⁰ *Compare* 2014 Justification Document justifying sole-source award to the Headhunter (Case File No. 15) with 2011 justification document justifying sole-source award to a different headhunting firm (Case File No. 83).

provides a side-by-side comparison of the two justification documents discussed above.²⁴¹) Taken together, this provides further evidence that the Senior Employee did not put forth honest effort or act impartially in her evaluation of the Headhunter's capabilities.

The OIG recognizes that the Senior Employee appeared to be motivated to recruit the best candidate for the Decennial Position. The OIG also recognizes that the Senior Employee did not have expertise in acquisitions and contracting law. Nevertheless, federal employees are bound to abide by ethics regulations whether they are performing duties in their area of expertise. In sum, the OIG concluded that the Senior Employee did not act in a manner that was impartial and without preference and did not put forward honest effort in performing her official duties. Therefore, she failed to comply with federal regulations, including the Standards of Ethical Conduct for Employees of the Executive Branch and FAR 3.101-1.

VI. Census's Acquisition Division Failed to Perform its Oversight Function and Did Not Appropriately Advise the Director's Office with Respect to the Acquisition

Census's Acquisition Division is responsible for ensuring that contract awards comply with CICA, the FAR, and Department acquisition policy. The OIG's investigation found that Census's Acquisition Division failed to perform its oversight function by allowing an improper sole source contract to be awarded.

The evidence established that the Acquisition Division failed to respond appropriately to numerous red flags, which should have signaled that a sole source award to the Headhunter was not proper. These red flags included that: (1) this was a request for executive search services that are widely available in the commercial marketplace; (2) the Director's office had conducted no market research and had already selected a firm prior to working with the Acquisition Division; (3) the Acquisition Specialist identified six small businesses off the GSA Schedule that she thought could perform the work; (4) seven firms responded to the Special Notice, at least two of which were clearly capable of performing the search; (5) the Justification Document was essentially cut and pasted from a 2011 procurement for similar services awarded to a different headhunting firm on a sole source basis; and (6) an e-mail message from the Headhunter suggested that he had been performing search services for the Director's office prior to contract award.

²⁴¹ The only "unique qualifications" set forth in the 2014 Justification Document that were different from those listed in the 2011 justification document stated that the Headhunter had "expertise working with high quality statistical, social science research . . . and public interest organizations."²⁴¹ While this experience appears relevant to the recruitment services Census sought to procure, as discussed above, the OIG's analysis established that the Headhunter is hardly the only recruitment firm to have experience and expertise performing executive searches for these types of organizations. The Justification Document goes on to state "that there are no other sources with the exact, unique skills and success rates demonstrated by [the Headhunter]." Of course, no company has the "exact, unique skills and success rates" of any other company. If this were the standard to justify sole source awards, arguably no contracts would ever have to be competed. The Justification Document concludes that the Headhunter is the "most capable to provide the mission critical services Census needs." While Census and specifically the Director's office is in the best position to determine which firm is "most capable" to perform the work, "most capable" is not the standard the agency must meet to circumvent CICA's mandate to use full and open competition absent a statutory exception.

The Senior Acquisition Official also received an e-mail from the OS Senior Official advising Census that it should remove the Special Notice and stop the sole source process because there was a good chance a potential offeror would protest the award.²⁴² There is no evidence that the Senior Acquisition Official responded to this e-mail or took any action whatsoever as a result. Given the fact that this e-mail came from a senior HR employee, and the contract was within the field of recruitment, it should have at least given the Senior Acquisition Official a reason to look into whether the award was justified. In addition, the Acquisition Specialist also received an e-mail from a GSA contracting official advising her that numerous recruiting firms were available on two GSA schedules, though she also did not appear to take action in response.

The evidence also suggested that the Senior Acquisition Official exercised poor judgment when he spoke to the Director about the procurement. Days after the Director first approached the Senior Acquisition Official about whether it would be possible to enter into a contract with the Headhunter on a contingency fee basis and followed up with a message providing the Senior Acquisition Official with the Headhunter's name and e-mail address, the Senior Acquisition Official responded to the Director, "who should [our] staff work with to define what [name of the Headhunter] will be doing for us[?]"²⁴³ In this same e-mail, the Senior Acquisition Official told the Director that they still needed "to complete some kind of Statement of Work along with other documents to complete the procurement."²⁴⁴ Although no market research had been done and no formal requirements for the contract had yet been defined (as the Senior Acquisition Official's e-mail acknowledges), the Senior Acquisition Official's e-mail suggests that he nevertheless presumed that the Headhunter would be performing the work for Census.

Moreover, there is no evidence showing that the Senior Acquisition Official ever advised the Director regarding the strong presumption in favor of competition and that a sole source award to the Headhunter would only be appropriate if the Headhunter was truly the only source capable of performing the work. The evidence further suggests that, had the Senior Acquisition Official provided this advice, the Director would have concluded that Census had to at least explore other headhunting firms and likely competed the award. In fact, the Director conveyed that concept repeatedly in his OIG interview, stating that he approached the Senior Acquisition Official at the outset because he wanted to ensure the procurement process was proper, stating "I depend on [the Senior Acquisition Official] and people in acquisition and the legal folks to do it right."²⁴⁵ Similarly, the Senior Employee's response to the draft OIG report stated that she "reasonably relied on the fact that [the Senior Acquisition Official and another acquisitions official] implicitly approved of the process."

²⁴² Case File No. 56.

²⁴³ Case File No. 44.

²⁴⁴ *Id.*

²⁴⁵ Director Tr. at 543-55.

With regard to the Acquisition Specialist, the evidence suggests that she could have exercised more diligence in ensuring that the contract was competed or otherwise awarded in accordance with the procurement rules. We base this on two principal facts: (1) it was an acquisition for services widely available in the commercial marketplace, and (2) it was apparent, based on the Acquisition Specialist's market research and the capability statements received from the seven other firms, that there were other firms capable of performing the search. Despite these facts, the Acquisition Specialist signed the Justification Document, which supported the sole source award to the Headhunter.²⁴⁶ When the OIG asked the Acquisition Specialist whether she would have been comfortable signing the contract, she stated "no" because she thought there were other companies who could have performed the work.²⁴⁷ Further, the Acquisition Specialist admitted that it was ultimately her responsibility to tell the Director's office they could not issue the contract as a sole source award if she believed there were other firms capable of performing the search.²⁴⁸

Moreover, as discussed above, on January 28, 2014, the Acquisition Specialist received an e-mail from the Headhunter indicating his urgency in getting the contract awarded because the Director was "starting to get interested in a candidate."²⁴⁹ The Acquisition Specialist subsequently forwarded the e-mail to her supervisor, noting that there was "some interest" from the Director's office to get the contract awarded as soon as possible.²⁵⁰ Yet the OIG found no evidence that either the Acquisition Specialist or her supervisor reacted to the fact that this e-mail suggested that the Headhunter had been performing work for the Director's office without a contract in place, nor did the Acquisition Specialist or her supervisor do anything about it. This additional failure on the part of the Acquisition Division to exercise a basic oversight function—ensuring that work is not performed without a valid contract in place—is also cause for concern.

²⁴⁶ See Case File No. 15.

²⁴⁷ Acquisition Specialist Tr. at 1569-71.

²⁴⁸ *Id.* at 1580-91.

²⁴⁹ Case File No. 2.

²⁵⁰ *Id.*

The OIG recognizes that the Acquisition Specialist's conduct was mitigated by steps she did take, her cooperation throughout the OIG's investigation, and the fact that the Senior Employee consistently provided materially inaccurate statements. Specifically, the evidence showed that the Acquisition Specialist questioned whether a sole source award was appropriate in these circumstances and took some steps to address that concern. For instance, she conducted market research and presented six other options to the Senior Employee in accordance with her duties as the Acquisition Specialist.²⁵¹ The Acquisition Specialist explained the contracting process to the Senior Employee, advising her that, if any other firm was capable of performing the work, Census was obligated to compete the award or consider a streamlined acquisition approach using contractors available off the GSA Schedule.²⁵² She also corresponded with the Senior Acquisition Official and her supervisor regarding the acquisition, asking for their advice and keeping them apprised of the procurement process. The evidence also showed that she met with the Attorney to ensure she had properly documented the sole source award.²⁵³ We also note that the Senior Employee responded to the Acquisition Specialist with misleading and unsupported information—namely, that all other firms considered were incapable of performing the search and only the Headhunter could meet the Census Bureau's needs. Nevertheless, the OIG ultimately concluded that the Acquisition Specialist did not do enough to ensure that the award to the Headhunter was made in accordance with acquisition rules and regulations.

Based on the above, the OIG found that the Acquisition Division failed to perform its oversight function by allowing an improper sole source to be awarded. These failures by Census's Acquisition Division are particularly troubling in light of the fact that this is the second sole source award for commercial headhunting services by Census Director's office in the last few years, neither of which led to successful placement of a candidate.

VII. Census Did Not Comply with Federal Regulations Governing the Use of Commercial Recruiting Firms

The evidence suggests that Census failed to comply with regulations that govern how federal agencies are to contract and work with commercial recruiting firms. For example, 5 C.F.R. § 300.405 requires that a written contract be awarded in order to engage the services of a recruiting firm and that certain language be included in that contract specifying the positions being recruited. 5 C.F.R. § 300.403 identifies the conditions when commercial recruiting firms may be used. As described below, the record established that Census officials caused the agency to fail to comply with these regulations.

5 C.F.R. § 300.403(b) and (c) stipulate that, in order for a federal agency to properly work with headhunting firms, they must provide vacancy notices to state-level employment offices and to OPM, while going about their own recruiting efforts.²⁵⁴ While Census reported that it conducted recruiting efforts, this activity took place approximately one year after the Headhunter began searching for candidates, not contemporaneous with it. The regulation

²⁵¹ Case File No. 51.

²⁵² Case File No. 14; Case File No. 78.

²⁵³ Acquisition Specialist Tr. 1783-1806.

²⁵⁴ 5 C.F.R. § 300.403.

specifies that the agency's recruiting efforts should precede or be contemporaneous with the commercial firm's efforts, by noting that the agency may use the recruiting firm when it "continues" its own recruiting efforts, necessarily meaning that those efforts are already ongoing.²⁵⁵ As a result, Census failed to comply with 5 C.F.R. § 300.403(b) and (c).

5 C.F.R. § 300.405(a) requires that federal agencies have a written contract awarded to engage the services of a commercial recruiting firm. As noted in the previous sections, Census did not have a contract in place until almost 100 days after the contractor began performing services, and in total, had a contract in place for only 49 percent of the time that the Headhunter was actually performing the work for the agency. As a result, Census failed to comply with 5 C.F.R. § 300.405(a).

5 C.F.R. § 300.405(b) prescribes certain language and conditions that must be included in the written contract with the recruiting firm. In particular, § 300.405(b) requires that the contract: (1) "include the qualifications requirements for the position(s) to be filled," (2) include language about screening "candidates only against the basic qualifications requirements," and (3) comply with "merit principles and equal opportunity laws."

The contract awarded to the Headhunter did not include specific or detailed qualifications for the position to be filled. In fact, Census's contract with the Headhunter actually obscures information about the position to be filled by inaccurately representing that the Headhunter was to "search for candidates to fill critical prospective senior level positions as needed." The OIG did not find any evidence that the Headhunter was ever instructed to search for candidates for multiple positions, or any position other than the Decennial Position. In fact, every relevant witness other than the Senior Employee (specifically, the Director, Executive, and Headhunter) rejected the idea that the Headhunter was searching for any position other than the Decennial Position. Yet, for a contract that was awarded to conduct an executive search for the Decennial Position, the word "decennial" is not mentioned once in the contract, nor is the position otherwise defined. As a result, we concluded that the contract awarded to the Headhunter did not include accurate information about the position to be filled, and therefore, Census failed to comply with 5 C.F.R. § 300.405(b).

²⁵⁵ 5 C.F.R. § 300.403(c).

Chapter 4: Responses to Draft Report

The OIG provided excerpts of this report to the Director, Senior Employee, and Senior Acquisition Official. Each individual was provided only with sections that described their conduct or that discussed their compliance with laws, regulations and policies. The three individuals were given an opportunity to provide feedback on the report in writing, and each person availed themselves of the opportunity to do so. All of the comments provided were considered together with the totality of the evidence, and the OIG made appropriate changes, which are reflected throughout the report.

I. Census Director

The Census Director's counsel provided a response, which is attached in Appendix D. The OIG considered this response and made appropriate changes in the analysis section of the report.

II. Senior Employee

The Senior Employee's counsel provided a response, which is attached in Appendix D. The OIG had concerns about certain aspects of the Senior Employee's testimony, and the resulting findings were strongly contested by the Senior Employee's counsel. The OIG evaluated this response with the evidence and made appropriate changes.

III. Senior Acquisition Official

Over the course of the investigation, the OIG had concerns about the credibility of certain statements made by the Senior Acquisition Official concerning his involvement in the contract process prior to its award. In providing comments to the OIG, the Senior Acquisition Official wrote that any differences in his testimony on the topic of his interactions with the Director from one interview to another resulted from honest lapses in memory. He noted that, even to the date of his response, he did not recall details about his initial conversation with the Census Director about the contract with the Headhunter, including "where, when, and exactly what was discussed." He also provided additional context for his workload, explaining that he receives "hundreds of emails weekly" and that he has "formal and informal conversations routinely with customers at all levels of the organization." He noted that the Acquisitions Division processed over 1,500 actions in FY 2014 and that during the time period in question, he was involved in several significant projects. The OIG evaluated this response with the evidence and made appropriate changes.

Chapter 5: Conclusion and Recommendations

As noted at the outset of this report, there are many rules governing the conduct of federal agencies and employees related to contracting. Despite this, Census could have taken several different paths to obtain assistance in recruiting for the Decennial Position in compliance with the rules.

For example, to meet Census's need for assistance in its recruiting effort, it could have conducted a full and open competition, allowing private firms to submit proposals and evaluating them based on publicly-disclosed criteria. Census would have been able to choose whether to evaluate firms based on either lowest overall cost or best value to the government. If the Headhunter applied for the contract and was able to compete against other firms on these criteria, Census would have been able to award the contract to him. If not, Census would have been able to select either a cheaper firm, or a firm that presented a better overall value to the government.

Census also could have selected three pre-qualified headhunting firms off the GSA Schedule, conducted an evaluation of them, and selected one to receive the contract. Firms on the GSA Schedule have undergone government-wide competition, and have been pre-approved to provide goods and services to federal agencies with less administrative burden than conducting full and open competition. Census also could have directly awarded the recruitment contract without competition to the Small Business Administration for performance by a small, economically disadvantaged firm participating in the 8(a) program. In addition, Census may have been able to hire the Headhunter as a consultant for a limited period of time, though it would have been the individual, and not the firm, that would have been working for the Census Bureau.²⁵⁶

In light of the findings contained in this report, the OIG recommends the following:

1. The Department consider appropriate action regarding the officials involved with the compliance matters discussed in this report.
2. The Department evaluate whether an Antideficiency Act violation occurred.
3. The Census Acquisition Division should remind its staff that they are the first line of defense in the acquisition process, and it is their job to enforce the acquisition rules regardless of the value of the contract or who is seeking the product or service. The U.S. Census Bureau should provide training to its acquisition staff regarding sole source awards to ensure that all future awards are made in compliance with CICA and the FAR.
4. The U.S. Census Bureau should consider a requirement that the Office of General Counsel review all sole source awards requiring a justification for legal sufficiency prior to award of the contract.

²⁵⁶ 5 C.F.R. part 304.

Appendix A: Candidate Submissions

This appendix contains examples of candidate submissions by the Headhunter before and after the February 2014 contract award.

[REDACTED]

November 16, 2013

Mr. John Thompson
Director, U.S. Census Bureau
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear John:

The attached CV of [REDACTED] is being submitted for the position of **Exploratory**.

Should you wish an interview scheduled with this candidate, please call at [REDACTED]
[REDACTED]

Yours truly,

[REDACTED]

Attachment

[REDACTED]

[REDACTED]

December 4, 2013

Mr. John Thompson
Director, U.S. Census Bureau
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear John:

The attached CV of [REDACTED] is being submitted for the position of **Exploratory**.

Should you wish an interview scheduled with this candidate, please call at [REDACTED]
[REDACTED]

Yours truly,

[REDACTED]

Attachment

[REDACTED]

[REDACTED]

March 18, 2014

Mr. John Thompson
Director, U.S. Census Bureau
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear John:

The attached CV of [REDACTED] is being submitted for the position of **Census**.

Should you wish an interview scheduled with this candidate, please call at [REDACTED]
[REDACTED]

Yours truly,

[REDACTED]

Attachment

[REDACTED]

Appendix B: Comparison of Justification Documents

Table II. Side-by-Side Comparison of 2011 and 2014 Justification Documents
 The yellow highlighted portions signify the language differences between the two documents.

Section	2011 Justification Document	2014 Justification Document
Nature of action being approved	These services are necessary to assist the U.S. Census Bureau (Census) in identifying appropriate and qualified candidates for consideration and ultimately selection of the best candidate to fill the critical Executive Leadership position of Associate Director for Demographic Programs. This unique source possesses the exceptional capacity to match the right person to this challenging position and has a proven track record for attracting the best possible candidates due to their extensive experience with survey organizations, exceptional networking skills and connections the company has maintained over the course of its twenty nine years in the industry.	The required services are necessary from a contractor to assist the U.S. Census Bureau in identifying appropriate and qualified candidates for consideration and ultimately selection of the best candidate to fill critical Executive Leadership positions as needed. . . . This unique source possesses the exceptional capacity to match the right candidate to a challenging position and has a proven record of accomplishment for attracting the best possible candidates due to their extensive experience with statistical, survey operations and organizations, exceptional networking skills and connections the company has maintained over its history in the industry.
Description of Services	<p>Recruitment/"Headhunting" Services to locate the best qualified candidate to fill the role of Associate Director for Demographic Programs at Census; taking into consideration the importance of identifying/recruiting the candidate capable of balancing the values of a mission-driven enterprise with the demands of organizational transformation to meet changing demographics and emerging data needs.</p> <p>Contractor must understand Census's need to recruit from a new generation of leaders to whom a responsible, civic-minded society is not a luxury, but a necessity. It is imperative that the contractor be familiar with survey organizations and best practices in survey methods and processing in its search for appropriate candidates to fill the Executive position(s); keeping in mind the importance of diversity, skills, and capability to locate those candidates with proven skills in the area of change management as well as executive leadership. Contractor will conduct the search in accordance with its established business model of dividing the search into five phases: Understanding the Challenge; Networking & Screening of Prospective Candidates; Narrowing the Field; Selecting Finalists and Checking References; and The Final Recommendation/Selection/Choice.</p>	<p>Recruitment/"Headhunting" Services to locate the best qualified candidates to fill unique, specialized Census Bureau positions; taking into consideration the importance of identifying/recruiting the candidate capable of balancing the values of a mission-driven enterprise with the demands of organizational transformation to meet changing demographics and emerging data needs and innovation. Contractor must understand Census' need to recruit from a new generation of leaders to whom a responsible, civic-minded society is not a luxury, but a necessity. It is imperative that the contractor is familiar with statistical survey organizations and best practices in survey methods and processing in its search for appropriate candidates to fill the Executive position(s); keeping in mind the importance of diversity, skills, and capability to locate those candidates with proven skills in the area of research based innovation, change management as well as executive leadership. Contractor will conduct the search in accordance with its established business model of dividing the search into five phases: Understanding the Challenge; Networking and Screening of Prospective Candidates; Narrowing the Field; Selecting Finalists and Checking References; and The Final Recommendation/Selection/Choice.</p>
Statutory Authority	41 U.S.C. 253 (c) (1)- Only One Responsible Source.	41 U.S.C. 253 (c) (1)- Only One Responsible Source.

<p>Unique Qualifications</p>	<p>[Headhunter's] expertise in this area has grown out of its founders' public service backgrounds and commitment to finding talented people to lead and enhance public institutions/enterprises. [Headhunter] undertakes nationwide searches for a wide variety of organizations, including leading universities, research institutions, academic medical centers, foundations, cultural institutions, economic development organizations, human service agencies, and national advocacy groups. Most of [Headhunter's] clients are not-for-profit groups, but they also work with select for-profit corporations, particularly those with ties to education and science, as well as with socially responsible companies. These skills and experience are determined to be a perfect fit for this Government executive recruitment requirement.</p> <p>[Headhunter's] approach to search is simple but disciplined. The firm's first step is to spend a great deal of time with the client (in this case, the U. S. Census Bureau Executives), getting to know the organization, and creating, through a collaborative process, a profile of the ideal candidate. The search process emphasizes in-depth interviewing and reference checking of candidates along with a thoughtful analysis of the fit between the client organization and candidate. The Census Bureau is convinced that this exact approach will result in a positive and successful outcome.</p>	<p>[Headhunter's] expertise working with high quality statistical, social science research, not for profit, and public interest organizations has grown out of an extensive background and commitment to finding talented people to lead and enhance these institutions and enterprises. [Headhunter] undertakes nationwide searches for a wide variety of organizations, including leading universities, research institutions, academic medical centers, foundations, cultural institutions, economic development organizations, human service agencies, and national advocacy groups. Most of [Headhunter's] clients have ties to education and science organizations, as well as with socially responsible companies. These skills and experience are determined to be a perfect fit for this Government executive recruitment requirement. [Headhunter's] approach to executive recruitment searches is simple but disciplined. The firm's first step is to spend a great deal of time with the client, getting to know the organization, and creating, through a collaborative process, a profile of the ideal candidate. The search process emphasizes in depth interviewing and reference checking of candidates along with a thoughtful analysis of the fit between the client organization and candidate. The Census Bureau is convinced that this exact approach will result in a positive and successful outcome.</p>
<p>No other potential sources are available</p>	<p>Through extensive market research it is determined that there are no other sources with the exact, unique skills and success rates demonstrated by [the Headhunter], in the area of Executive Position recruitment. The unique skills and business process/model employed by [Headhunter] places this firm in the unique position of being the most capable to provide the mission critical services Census needs coupled with the unsurpassed reliability/success rate demonstrated through the firm's past performance.</p>	<p>Through extensive market research it is determined that there are no other sources with the exact, unique skills and success rates demonstrated by [the Headhunter], in the area of executive position recruitment. The unique skills and business process/model employed by [Headhunter] places this firm in the unique position of being the most capable to provide the mission critical services Census needs coupled with the unsurpassed reliability/success rate demonstrated through the firm's past performance.</p>
<p>Cost</p>	<p>It is anticipated that the company will employ the standard industry practice of a 20-30% fee, based on the value of the salary of the recruitment. Other Direct Costs (such as travel) will be reimbursed at contractor's cost as long as it is determined allowable and allocable to the recruitment requirement.</p>	<p>It is anticipated that the company will employ the standard industry practice of 25% fee, based on the value of the salary of the recruitment. Other Direct Costs (such as travel) will be reimbursed at contractor's cost as long as it is determined allowable and allocable to the recruitment requirement.</p>

Market Research	As noted above, the ability to fulfill this requirement, requires detailed knowledge of executive recruitment as it relates to the U.S. Census Bureau, it's uniqueness and critical mission of a national, even global level. Such experience is limited explicitly to the provider of this service. There are recruiting and Human Resources firms that conduct this type of exercise; however, there is no evidence of any firms with the proven experience, methodology, and success rate exhibited by [Headhunter] and required by the U.S. Census Bureau.	As noted above, the ability to fulfill this requirement requires detailed knowledge of executive recruitment as it relates to the U.S. Census Bureau, its uniqueness and critical mission of a national, even global level. Such experience is limited explicitly to the provider of this service. There are recruiting and human resources firms that conduct this type of exercise; however, no information was found of any other firms with the proven experience, methodology, and success rate exhibited by [Headhunter] for the specialized services required by the U.S. Census Bureau.
Other Supporting Facts	No alternative source of comparable skills, knowledge, and business process model are <i>immediately</i> available at any price. The amount of time and funds required to fulfill this Executive Recruitment requirement by any other source that could not guarantee success would cause an unacceptable delay in the Census Bureau's ability to fulfill its mission. Not acquiring the services of [Headhunter] will jeopardize the quality and timeliness of the Census Bureau ability to successfully recruit the Executive position.	No alternative source of comparable skills, knowledge, and business process model are <i>immediately</i> available at any price. The amount of time and funds required to fulfill this Executive Recruitment requirement by any other source that could not guarantee success would cause an unacceptable delay in the Census Bureau's ability to fulfill its mission. Not acquiring the services of [Headhunter] will jeopardize the quality and timeliness of the Census Bureau ability to successfully recruit the Executive position(s).

Appendix C: Names and References

Table 12: Names and References in OIG’s Review of a Census Bureau Sole Source Award for Executive Search Services.²⁵⁷

NOT FOR PUBLIC RELEASE

Report Identifier	Name	Title ²⁵⁸
Director	John Thompson	Census Director
Executive	[REDACTED]	[REDACTED] Census
Senior Acquisition Official	[REDACTED]	[REDACTED] Census
Senior Employee	[REDACTED]	[REDACTED] Census
Acquisition Specialist	[REDACTED]	[REDACTED] Census
Attorney	[REDACTED]	[REDACTED] Office of General Counsel
OS Senior Official	[REDACTED]	[REDACTED]
Senior Appointee	[REDACTED]	[REDACTED]
Headhunter	[REDACTED]	Owner of [REDACTED] Census contractor
Candidate One	[REDACTED]	Private citizen
Candidate Two	[REDACTED]	Private citizen
Candidate Three	[REDACTED]	Private citizen
Candidate Four	[REDACTED]	Private citizen
Candidate Five	[REDACTED]	Private citizen
Candidate Six	[REDACTED]	Private citizen
Candidate Seven	[REDACTED]	Private citizen
Candidate Eight	[REDACTED]	Private citizen
Candidate Nine	[REDACTED]	Private citizen
Candidate Ten	[REDACTED]	Private citizen
Candidate Eleven	[REDACTED]	Private citizen
Candidate Twelve	[REDACTED]	Private citizen
Senior Executive Official 1	[REDACTED]	[REDACTED] Census
Senior Executive Official 2	[REDACTED]	[REDACTED] Census
Senior Executive Official 3	[REDACTED]	[REDACTED] Census
Senior Executive Official 4	[REDACTED]	[REDACTED] Census
Senior Executive Official 5	[REDACTED]	[REDACTED] Census
Senior Executive Official 6	[REDACTED]	[REDACTED] Census
Senior Executive Official 7	[REDACTED]	[REDACTED] Census
Senior Executive Official 8	[REDACTED]	[REDACTED] Census

OIG also discusses the “Decennial Position,” which refers to the [REDACTED] and to a “Social Research Organization,” which refers to the National Opinion Research Center at the University of Chicago.

²⁵⁷ This table is not for public release. It contains information protected by the Privacy Act of 1974, 5 U.S.C § 552a, and the use, dissemination, or reproduction of this document or its contents beyond the purposes necessary for official government business may be unlawful.

²⁵⁸ The titles listed here were accurate at the time of the individual’s interview with the OIG; some or all of these titles may no longer be accurate.

Appendix D: Responses to Draft Report



SCHERTLER & ONORATO, L.L.P.

May 29, 2015

VIA E-MAIL and U.S. MAIL

██████████ Special Agent
 U.S. Department of Commerce
 Office of Inspector General
 Office of Investigations
 1401 Constitution Avenue, N.W.
 Washington, D.C. 20230

██████████@oig.doc.gov

*Re: Response of John H. Thompson to OIG Draft Investigative Report 14-0408:
 "U.S. Census Bureau: Review of Sole Source Award for Executive Search Services"*

Dear Agent ██████████:

We are writing on behalf of John H. Thompson, Director of the U.S. Census Bureau, in response to the U.S. Department of Commerce, Office of Inspector General Investigative Report Number 14-0408, "U.S. Census Bureau: Review of Sole Source Award for Executive Search Services." You provided us with a redacted draft of the report on Tuesday, May 26, 2015 ("Draft Report"). We appreciate the opportunity to review the Draft Report and provide a response to the Office of Inspector General ("OIG") before it is finalized.

The Draft Report contains a lengthy and detailed factual chronology of the Director's contact with an individual who owns and operates a small business that provides executive search services,¹ and his efforts to identify a high-quality candidate for the important position of ██████████ ("Decennial Position"). The Draft Report concludes that the Director may have knowingly and willingly violated the Anti-Deficiency Act,

¹The Draft Report refers to the executive recruiter as the "Headhunter" and refers to other individuals by their position title (e.g., "Executive") or by their witness status (e.g., "Candidate"). To main consistency with the Draft Report, we have adopted the same naming convention in this response.

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31 U.S.C. § 1342 (“ADA”) and department policies by “accepting voluntary services from the Headhunter” for a period of three months before a contract was awarded. It also finds that the Director’s use of his personal email to communicate for a brief period with the Headhunter violated various rules and regulations.

While the facts recited in the Draft report are accurate, the conclusions drawn by OIG are not. For the reasons discussed below, we urge the OIG to reconsider its findings that the interaction between the Director and the Headhunter “implicates” a violation of the ADA. Under the circumstances here, there was no such violation and certainly no knowing, intentional, or willful violation of the ADA or any other rule, policy, or regulation. We also ask the OIG to remove the entire factual discussion relating to Candidate 11 which is irrelevant to the findings contained in the Draft Report. There was nothing inappropriate about the recruitment or consideration of Candidate 11 for the Decennial Position. The inclusion of this lengthy narrative might suggest otherwise and should be deleted.

I. THE DIRECTOR WAS ASKED TO BRING INNOVATIVE LEADERSHIP TO THE CENSUS BUREAU.

The Director has had a long and distinguished career with the U.S. Census Bureau. From 1975 until 2002, he served in various roles in the Statistical Methods Division and the Statistical Support Division before being appointed Chief of the Decennial Management Division. Eventually he was promoted to Associate Director and was the senior career executive responsible for all aspects of the 2000 census. During his 27 years with the Census Bureau, the Director earned the praise and respect of his colleagues in the government and the private sector. He is widely regarded as a national leader in the social science research community, having been elected as a fellow of the American Statistical Association, and serving as a member of the Committee on National Statistics at the National Academy of Sciences. The Director retired from government service and left the Census Bureau in 2002 to join an independent Social Science Research Organization where he served as President and Chief Executive Officer.

Although the Director did not intend to return to the federal government after retirement, he was persuaded to re-enter public service to bring his leadership skills and statistical expertise to the Census Bureau as it plans for the 2020 decennial census. By all accounts, the Census Bureau lacked innovation and insight into the latest advances in information technology (“IT”) that could modernize the census. The Director was asked by President Obama to return to the Census Bureau – this time as the Director – to lead the organization in a different direction, to take advantage of what he learned in the private sector, and to incorporate the latest advances in census technology. Forfeiting a much higher salary and his leadership role at the Social Science Research Organization, the Director answered the President’s call and rejoined the Census Bureau in 2013.

The Director's decision to replace the person serving in the Decennial Position was driven by the same commitment to excellence that brought the Director back to the Census Bureau. As the person [REDACTED] of the constitutionally-mandated census, the Decennial Position plays a key leadership role [REDACTED] the decennial census. This person must be on top of the latest advances [REDACTED]

[REDACTED] The Director, in consultation with the Executive, made the decision to change the [REDACTED].²

II. THE DIRECTOR'S COMMUNICATIONS WITH THE HEADHUNTER BEFORE THE CONTRACT AWARD DID NOT VIOLATE THE ADA.

In thinking about how he would look for a new person to serve in the Decennial Position, the Director considered using professional executive search services. He discussed this possibility with the Executive who related a prior, unsuccessful, experience with an executive recruiter. The Director, by contrast, had a very favorable experience with the Headhunter with whom he had worked in the private sector, and who had significant experience finding and placing senior executives. The Director was aware that the Headhunter operated on a contingency-fee basis where he would be paid only if he identified a candidate who was ultimately hired.

Importantly, and as noted in the Draft Report, the relationship between the Director and the Headhunter was purely professional, *i.e.*, there was no personal or financial connection between the Director and the Headhunter. In fact, before the Census Bureau contract was awarded, the two men had never met in person. The Director had worked with the Headhunter during his time in the private sector and found the Headhunter to be reliable, effective, and discrete. Discretion was important; the Director did not want the incumbent occupying the Decennial Position, or others, to become aware that a search was underway to find a replacement.³

The Director was candid with the Executive (and later in his interview with OIG) that he did not know whether a contingent contract was possible in the federal arena. The Director had very limited experience with, and virtually no training on, the rules and regulations governing

² OIG found no evidence to suggest that the Director's decision to replace the Decennial Position was prompted by anything other than a desire to have the most qualified person fill that role. "[T]he Director and other employees involved in the matter appeared to be motivated by a desire to ensure the success of Census's decennial operation by attracting top talent from the private sector in a cost-effective manner." Draft Report, p. 2.

³ The Headhunter confirmed that he was not even permitted to tell potential candidates the specific position title. See Draft Report, p. 12.

federal contracts in his current position. Significantly, the Director cannot recall ever having been trained on the ADA or related department policies. Given his limited experience, the Director properly referred the contracting questions and process to the acquisition professionals at the Census Bureau and asked the Executive to follow up.

The Director reached out to the Headhunter to see whether he might be interested in working with the Census Bureau to recruit someone for the Decennial Position. At the time, the Director was fully aware that there was no contract – and no promise of a contract – between the Headhunter and the Census Bureau.

Despite the absence of a contract, in the fall of 2013 the Headhunter began sending resumes to the Director, unsolicited. Significantly, the Director did not ask the Headhunter to begin an executive search and did not ask the Headhunter to begin sending resumes of potential candidates. Indeed, the Director had provided only enough basic information to the Headhunter about the position during their initial communications to enable the Headhunter to determine whether he might be interested in engaging in a candidate search. A more detailed conversation about the actual position and the required duties and skill sets would happen months later, only *after* the contract was awarded. As these unsolicited resumes arrived, the Director understood clearly that there was no contract in place and thus the Headhunter could have no expectation of payment at that time.

In light of these facts and the unique circumstances of the Headhunter's activities, OIG should reconsider its finding that the Director's actions violated the ADA. First, between November, 2013, and February, 2014, everyone was clear that there was no contract in place. The Director knew, and had no expectation, that any payment would be made to the Headhunter for any services if the Director identified a candidate before a contract was awarded. Second, even after the contract was awarded, the terms of the contract provided that the Headhunter would be paid only if an identified candidate was actually hired. Thus, at the time the Headhunter forwarded the unsolicited resumes, there were two events that would need to occur before any payment obligation would arise: (1) approval of the contract; and (2) successful hiring of a recommended candidate. Neither of those events (and certainly not both) would materialize before February 2014, when the contract was in place.

The Draft Report examines, in painstaking detail, what the Director and Executive did with the resumes forwarded by the Headhunter. Between November 16, 2013, and February 18, 2014, the Headhunter sent the names and resumes of seven persons who the Headhunter thought might interest the Director. The Director shared some of these resumes with the Executive. None of the seven persons referred was interviewed for the position, and the Director personally spoke with only one. There was nothing inappropriate about this. Indeed this type of referral process happens frequently in the federal government. It is often the case that government

officials looking to fill a position will ask colleagues – both inside and outside the government – for referrals. Certainly, it cannot be improper acceptance of “voluntary services” or a violation of 31 U.S.C. § 1342 for a government official to reach out and actively solicit names for possible positions, much less review unsolicited referrals. For the OIG to conclude otherwise would be an unprecedented application of the ADA. The fact that the Headhunter forwarded the resumes to the Director hoping – eventually – to have a contract for executive search services does not create an ADA violation where there was none before.⁴

Given these facts, the conclusion in the Draft Report that the Director “actively accepted the Headhunter’s services and encouraged him to continue providing those services in the absence of an enforceable contract,” thus violating the ADA, is unsupported. While it is true that the Director opened the emails and resumes sent by the Headhunter in advance of the actual award of the contract, there is no evidence that the Director: asked the Headhunter to send candidate resumes; promised a contract; promised payment; or took any affirmative steps to “encourage” or direct the Headhunter to begin working on the executive search before February 2014. As far as the Director was concerned, these were simply informal communications about possible candidates to fill an expected vacancy and not “services” provided pursuant to, or in anticipation of, a contract.

III. THE DIRECTOR DID NOT KNOWINGLY OR WILLFULLY VIOLATE THE ADA OR OTHER REGULATIONS.

In addition to concluding that the Director violated the ADA, the Draft Report finds that “the evidence further suggests that the Director may have knowingly and willfully violated the statute.”⁵ OIG bases this finding almost exclusively on the Director’s request on December 9, 2013, to shift his email communications with the Headhunter from his government email account to his personal email account. Seizing on this one fact, the Draft Report jumps to the conclusion that by using his personal email, the Director “understood his conduct may have been in contravention of 31 U.S.C. § 1342.” Such a conclusion is unjustified.

First, there is no evidence that the Director had any personal knowledge of the restrictions contained in the ADA limiting the acceptance of voluntary services. As noted above, the Director had no significant training or education on the ADA. While he understood that he could not enter into a contract without funds being appropriated, he had no knowledge or

⁴ There is no evidence, and the Draft Report does not suggest, that by reviewing the resumes and communicating with the Headhunter prior to contract award, the Director violated of 31 U.S.C. § 1341, a separate provision of the ADA which prohibits a government officer or employee from involving the government in a contract or creating an obligation for the payment of money before an appropriation. The Draft Report focuses, instead, only on the unauthorized acceptance of voluntary services under 31 U.S.C. § 1342.

⁵ Draft Report, p. 32.

understanding about that portion of the ADA relating to voluntary services. Without this knowledge or understanding, he could not knowingly or intentionally violate 31 U.S.C. § 1342.

Second, the real reason for the email shift was entirely unrelated to the ADA. As the Director explained to OIG, his suggestion to the Headhunter that they communicate using the Director's personal email was driven by the Director's view that their conversation was informal *because* there was no contract in place. The Director understood that his government email was to be used only for official government business. Although he had limited knowledge of the rules governing email record keeping, he did know that his Census Bureau emails would be part of the public record. The Director believed that since there was no contract with the Headhunter, his communications with the Headhunter were not official government business and should not be conducted on his government email account. Thus, his request to move the email conversation to his personal account *was an effort to comply with rules governing emails*, rather than an attempt to cover up a knowing ADA violation.

Third, the suggestion in the Draft Report that the Director's request to shift his conversation to his personal email is somehow evidence of a knowing or intentional ADA violation is completely illogical because:

- The request was made on the Director's government email account. The Director knew that his email of December 9, 2013, would be stored and accessible. If the Director was attempting to hide his communications with the Headhunter, he could have spoken with him by telephone without leaving an obvious email trail.
- The Director preserved all of his communications with the Headhunter that were conducted on his personal email and willingly turned them over to OIG when asked.⁶

In sum, without evidence that the Director had actual knowledge of the statute prohibiting the acceptance of voluntary services, the Director's use of personal email under the circumstances here – without more – is insufficient to support a finding that the Director knowingly or willfully violated 31 U.S.C. § 1342.⁷

⁶ All of the communications by the Director made on his personal email account related to the unsolicited resumes sent by the Headhunter and not about the status of the Headhunter's pending contract.

⁷ Given the significant consequences of a finding that the Director knowingly or willfully violated the ADA, including the possibility of criminal prosecution, 31 U.S.C. § 1350, such a finding should not be made lightly and certainly not without a substantial evidentiary basis which is lacking here.

IV. THE DRAFT REPORT'S DISCUSSION OF CANDIDATE 11 IS IRRELEVANT.

Nearly one third of the Draft Report's pages are devoted to a detailed recitation of the facts concerning the referral, consideration, and eventual non-selection of a person identified as Candidate 11. Indeed, the Draft Report recounts such details as Candidate 11's schedule during a trip to visit the Census Bureau, the persons with whom Candidate 11 met, how long those meetings lasted, and the Headhunter's personal records concerning Candidate 11. This level of detail contained in the Draft Report is curious because Candidate 11 was referred to the Director by the Headhunter on May 5, 2014, *weeks after* the contract had been awarded to the Headhunter. Given the timing of Candidate 11's referral and consideration, there could be no ADA violation since an authorized contract was in place. Nor is there any evidence or suggestion that Candidate 11 – who was extremely well-qualified and certified by human resources as meeting the job requirements – was improperly referred to, or considered by, the Director.

Significantly, the Analysis and Findings contained in Chapter 3 of the Draft Report relate *solely* to the Director's actions during the pre-award phase on the Headhunter's contract.⁸ Nowhere in the findings is there any mention of Candidate 11 or the Director's actions following the award of the contract.⁹ Since Candidate 11 plays no role in the Draft Report's findings, the extended discussion relating to Candidate 11 should be removed.

In addition to being irrelevant, the Draft Report's discussion of Candidate 11, in its current form, is affirmatively misleading by making two contradictory suggestions: (1) that the Director "pre-selected" Candidate 11 before the vacancy announcement was formally posted; and (2) that the Director purposefully "non-selected" Candidate 11 in response to learning about the existence of the OIG investigation. Neither suggestion has evidentiary support. It is fundamentally unfair to the Director to place such insinuations in an OIG report that will be part of the public record.

The inference of pre-selection comes from the Draft Report's discussion of the Headhunter's tracking sheet on which he indicates, in July, 2014, that Candidate 11 was to be hired effective January, 2015. The entry was apparently prompted by the Headhunter's interpretation of comments made by the Director to the effect of, "[Candidate 11's] the one." The Headhunter's understanding of this comment, and whether he believed that Candidate 11 would eventually be selected, is irrelevant. In fact, Candidate 11 went through a long and extensive process, meeting with a number of Census Bureau officials to share and receive

⁸ The findings concerning the Director appear in Chapter 3, Section I "Pre-contract Award."

⁹ We recognize, of course, that the Draft Report is significantly redacted. We assume, however, that the redacted portions do not relate to the Director and would therefore not include any findings relating to his consideration of Candidate 11.

information. The process was inclusive and Candidate 11 was fully vetted. There is no evidence – and no finding – that the process by which Candidate 11 was considered was improper in any way. The idea of pre-selection is also completely belied by the fact that, ultimately, a different candidate was offered the position.

Faced with the non-selection of Candidate 11, the Draft Report suggests – but does not actually allege – that the basis for the non-selection was the existence of the OIG investigation. This inference is raised in a paragraph contained in Section XI. F. of the Draft Report titled “Census’s Decision to Not Select Candidate Eleven.” The paragraph discusses *when* the Director and Executive learned of the OIG investigation and leaves the impression that knowledge played a role in the Director’s decision to place another person in the Decennial Position. Both the Director and Executive adamantly denied that the OIG investigation played any role in the selection process. In fact, the Director was aware that the OIG had interviewed persons in connection with the contract award before Candidate 11 visited the Census Bureau in June, 2014. Because there is absolutely no evidence that the OIG investigation affected the non-selection of Candidate 11, this inference should be removed from the Draft Report along with the rest of the discussion concerning Candidate 11.

Equally irrelevant are the repeated references in the Draft Report to the length of time that it took to have the vacancy announcement posted for the Decennial Position. As with the non-selection of Candidate 11, the Draft Report suggests, but does not specifically allege, that the Director had a role in delaying the release of the vacancy announcement to meet the needs of Candidate 11. There is, of course, no evidence that the Director took any action to slow down the process of posting the vacancy. The drafting and certification of the position was squarely in the hands of human resources, and the Director’s only involvement was signing off on the completed position description. As the Director told OIG, the delays were attributable to normal government bureaucracy.

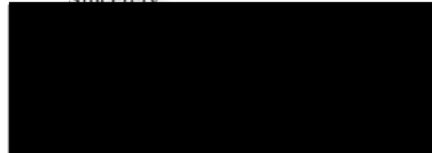
All told, since the Draft Report makes no findings concerning the Director’s conduct following the award of the contract with the Headhunter, the entire discussion relating to the consideration of Candidate 11 and the timing of the vacancy announcement should be deleted.

V. CONCLUSION

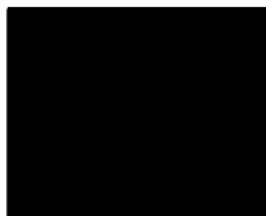
We trust that you will give careful consideration to the points we raise in this letter before finalizing and submitting your report. A fair and balanced review of the evidence leads to the conclusion that the Director did not knowingly or intentionally violate the ADA or any other department rule or regulation. On his behalf, we also urge you to delete the portions of the Draft Report which are irrelevant, unsupported by the evidence, and unfairly suggest inappropriate conduct by the Director.

If you have any questions, we are happy to discuss the matter further with you.

Sincerely,



SCHERTLER & ONORATO, LLP
Counsel for John H. Thompson



May 26, 2015

SENT VIA ELECTRONIC MAIL

Mr. Todd Zinser
Inspector General
Office of Inspector General
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: OIG Case File No. 14-0408

Dear Mr. Zinser:

Thank you for the invitation to provide a written statement to the Department of Commerce Office of Inspector General's (OIG) May 15, 2015 draft report on behalf of my client, who is identified as "Senior Employee." We strongly disagree with many of the findings of the OIG's report and welcome the opportunity to explain how the allegations and conclusions reached by the OIG are unfounded and disregard a number of critical facts.

The report incorrectly identifies the Senior Employee as the person who decided to use the sole-source process for this contract and who "steered" the award to the Headhunter. The facts, however, show that the Senior Employee did not make these decisions; her supervisors did. She did not have the authority to make these decisions or to bind the Government to any contract. Moreover, the report entirely ignores the fact that the Senior Employee, who did not have experience in sole-source contracting, was ordered to rely on the Acquisitions Division's expertise during this process. She did so. If the process failed, then it was not the fault of the Senior Employee who acted in good faith throughout.

As an initial matter, we note a few difficulties we faced in responding to this draft report. First, the OIG provided us only 10 days to respond, which included the three-day Memorial Day weekend. Our request for an additional few days to respond given the holiday weekend was denied without explanation. Second, the provided report was redacted, leaving us unable to review and respond to the report in its entirety. Third, the OIG denied our request to review the transcripts of two key witnesses' testimony. Given the inconsistency between some of the testimony cited in the report and the conclusions drawn in the report, this denial is particularly troubling. We were unable to compare the report's description of these witnesses' testimony against the actual testimony.





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The Senior Employee's Cooperation

The Senior Employee fully cooperated in all respects with this investigation. She participated in three lengthy interviews, totaling approximately eight hours. These interviews were voluntary. She answered every question that was asked of her. Through her counsel, the Senior Employee was asked to check her records for documents and emails. She did so. The Senior Employee's cooperation is nowhere noted or credited in the report. Instead, she is accused of lacking candor and evasiveness.

Conduct of the Investigation

During these three separate and lengthy interviews, the Senior Employee was asked the same questions numerous times. It is apparent now that this was an effort to elicit slightly different answers to the same questions and then use those answers to accuse the Senior Employee of making misleading statements.

In addition, the principal agent investigating this matter apparently decided the Senior Employee had committed wrongdoing, even before speaking to her. When the agent conducted his first interview with the Senior Employee, who was without representation at the time, the tone of the interview was aggressive and bullying. He did not hide his disdain for her answers and accused her of wrongdoing. However, once the Senior Employee retained counsel, the agent was polite and professional. This reversal strongly suggests that OIG's goal in the initial interview of the Senior Employee was not to discover the facts of what happened and draw fair conclusions from those facts, but rather to intimidate an unrepresented employee into admitting wrongdoing.

The Sole-Source Contract

Cost of the Contract

On February [REDACTED] 2014, the Census Bureau executed a six-month contract for \$55,000 fee for service award for executive level search and recruitment services with the Headhunter. The Headhunter is a small business firm with extensive experience and expertise filling positions at leading statistical organizations such as the [REDACTED]. The Headhunter offered a lower price than any other vendor and did not require the government to pay the \$55,000 fee unless a candidate was hired by the agency.

While the report mentions this fact, it seriously downplays its significance. Yet one can only imagine what the report would have said had the Senior Employee chosen the most expensive option for the contract. She would have then been accused of wasting taxpayer dollars.



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The Senior Employee's Lack of Experience in Sole-Source Contracts

As explained several times to the OIG during her interviews, the Senior Employee had very little experience with sole-source contracts and had no background as a contracting officer. These facts are nowhere mentioned in the draft report. Instead, the Senior Employee is treated as though she is an experienced contracting officer who knows and understands the nuances of sole-source contracting.

Because of this lack of experience, the Senior Employee reasonably relied on the Acquisition Specialist to advise her as to the appropriate process to follow. The Acquisition Specialist provided templates of documents to use, as well as advice about the appropriate manner to conduct the contracting process. Yet, in the redacted report, neither the Acquisition Specialist nor anyone in the Acquisitions Division is assigned any blame.

Who Decided to Sole Source this Contract?

The decision to sole source this contract came from the Census Bureau Director, the Executive, and the Acquisition Division. In fact, the report makes this clear, stating on page 9 that the Executive asked the Senior Employee to “work with the Census’ Acquisition Division to see whether it would be possible to award a recruiting contract to the Headhunter.” The Executive indicated that the Director favored this course, telling her that “the Director was familiar with the Headhunter and knew that he would work on a contingency-fee basis.” The Executive also told the Senior Employee that similar sole-source contracts had happened in the past for this type of work.

Despite the fact that the Senior Employee’s superiors made clear the result they wanted (that the contract be a sole-source contract and that it be awarded to a specific company), the draft report suggests that the Senior Employee “steer[ed] the contract award to the Headhunter” (p. 37). This conclusion is completely unfounded and contrary to the facts. *First*, the Senior Employee had never worked with the Headhunter before and had no previous experience with the Headhunter. In contrast, the Director had previously worked with the Headhunter. *Second*, it ignores the very real dynamics in the office: the Senior Employee was told what to do by her direct supervisors, she appropriately followed that direction to the best of her ability and she relied on the expert advice of the Acquisitions Specialist (and the Acquisitions Division) to fulfill her duties. The report, however, assigns all blame to the Senior Employee and none to the other participants in this contracting process.

The Senior Employee Did Not Have Authority to Sole Source this Contract

Not only was the sole-source process not the Senior Employee’s idea, but she did not have the authority to make the decision to enter into a sole-source contract. Sole-source Awards require a justification and authorization that must be approved by legal counsel, a Contracting Officer, and upper level procurement authorities.¹ The Senior

¹ 48 CFR 6.303 (Justification) and 48 CFR 6.304 (Justification Approval).

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Employee does not have the authority to bind the Government. In accordance with the Federal Acquisition Regulation (FAR), only Contracting Officers acting within the scope of their authority are empowered to execute contracts on behalf of the Government. Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. They are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interest of the United States in its contractual relationship. Contracting Officers are allowed wide latitude to exercise business judgment and shall ensure that contracts receive impartial, fair, and equitable treatment.²

In this case the "Acquisition Specialist" was the [REDACTED].³ See Exhibit A. The Senior Employee was not designated nor authorized as a contracting officer's representative and thus relied solely on the guidance, advice and direction of the [REDACTED]. The Senior Employee completed all requests in accordance to the [REDACTED]'s guidance and used the templates and sample documents she provided.

To place sole blame on the Senior Employee for this process discounts the facts in the record. Because of her inexperience in the contracting process, the Senior Employee worked closely with the Acquisition Specialist to learn about the process and trusted that this experienced employee would guide her through the process. If the process followed was not appropriate, then the blame rests on the Acquisition Specialist and not on the Senior Employee.

Moreover, the Senior Employee's direct supervisor, the Executive, directed the Senior Employee to rely on the Acquisition Specialist's advice (p. 9). The OIG now blames the Senior Employee for reasonably doing so. At no point did the Director, Executive or Acquisition Specialist raise any concerns with the process to the Senior Employee, and there are no facts to suggest that the Senior Employee ignored any of their advice as to how to proceed during the sole-source process.

In addition, the [REDACTED] and his [REDACTED] knew about, and were involved in, this contracting process. Despite their extensive government contracting experience, neither raised any concerns during the process, such as with the thoroughness of the Senior Employee's review of the firms. The Senior Employee reasonably relied on the fact that these two [REDACTED] Acquisition Division officials implicitly approved of the process. Moreover, an email from the Acquisition Specialist (and copied to the [REDACTED] in mid-January 2014 confirmed that the sole-source contract "was reviewed by our Legal Counsel and approved for posting" (Exhibit B).

² 48 CFR 1.601-1; 48 CFR 1.602-2.

³ We note that the draft report uses the title "Acquisition Specialist." In fact, this person was the [REDACTED] and her email signature block (see Exhibit B) notes that she is a "[REDACTED]." The use of the Acquisition Specialist title improperly downplays the key role that this person had in the sole-source contract, as well as the regulatory implications of approval of the sole-source contract by this person. This response uses the Acquisition Specialist title only for the sake of clarity.



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Documentation in File of Market Research Was the Acquisition Specialist's Responsibility, Not the Senior Employee's Responsibility

The report concludes that the contracting file was deficient because it did not contain "the Senior Employee's rejection [of the six firms]" or "any supporting documentation." The report also points out that "[t]he Senior Employee did not provide the OIG with any written documentation evincing her evaluation of these six firms." (p. 14).

There seems to be no dispute that the Senior Official evaluated the six firms, but only a concern that the official contract file did not contain sufficient documentation of this evaluation. The OIG's conclusion that the formal contract file is deficient cannot be blamed on the Senior Employee. She has no experience or expertise in what documents should be contained in the official contract file. Rather, she relied on the Acquisition Specialist to inform her as to the steps she should take. If further documentation of the reasons for the rejection of the six firms needed to be made, then it was the Acquisition Specialist's job to inform the Senior Employee, not the Senior Employee's job to know that herself.

As explained by the Senior Employee during her interviews with OIG, she recalled having a conversation with the Acquisition Specialist about the results of her evaluation. It was solely the Acquisition Specialist's (as the [REDACTED] discretion and decision not to memorialize the discussion and include in the contract file.

The OIG is fully aware that the Senior Employee has no responsibility for preparing and maintaining the contract file. In fact the Senior Employee has never viewed the contract file, as it is maintained by the Acquisitions Division.

Rejection of the Six Firms Based on Review of Websites

The draft report states that the Senior Employee did not act impartially in evaluating the six firms identified by the Acquisition Specialist and unfairly rejected three of them as not capable of performing the work. The report, however, fails to mention that the Acquisition Specialist also researched these six firms and did not identify these companies as having filled multiple positions in the field of statistics. There is also no indication in the report that the Acquisition Specialist expressed any concern to the Senior Employee that the Senior Employee's evaluation was somehow deficient.

The Senior Employee reviewed the websites of the six firms in November 2013. The OIG "independently" reviewed those websites in April or May 2015—over 17 months later. The report claims that the OIG "review[ed] . . . the same information that Senior Employee told the OIG she considered" (p. 38). Yet there is no indication that OIG confirmed that the version of the websites it reviewed actually contained the same information in April/May 2015 as they did in November 2013. Given the rapidly changing nature of recruiting work, it is hard to imagine that the websites of these companies

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were not updated in the intervening 17 months. The OIG's failure to confirm this fact calls into question all conclusions drawn from OIG's review of the websites.

We have several specific concerns with the OIG's conclusions:

The report mentions that Firm D, which is JDG Associates Ltd., has filled multiple positions in the field of statistics, including the [REDACTED]. However, this position was not listed on the JDG website in November 2013 when the Senior Employee reviewed it. It may have been added after the Senior Employee's review and before the OIG's review seventeen months later.

In addition, the [REDACTED] position has remained vacant since 2012.⁴ The OIG's failure to investigate whether this position was actually filled casts serious doubts on its conclusion that the stated capabilities on these firms' websites are accurate.

The report states that Firm E and F, which are Golden Key Group and Business Management Associates, Inc., respectively, are qualified because they are listed in the "statistics labor" category on the GSA Federal Supply Schedule. It was not sufficient for the Census Bureau's purposes for a headhunter only to be listed in the "statistics labor" category, as vendors simply self-identify their firms in these categories. Rather, the position required that the firm have actually placed individuals in executive-level statistics positions.⁵ Neither firm's website in November 2013 identified positions in the field of statistics.

Rejection of the Seven Firms Based on Capability Statements

On January [REDACTED] 2014, the Census Bureau issued the Special Notice on FedBizOps and explained the manner in which the Census Bureau would evaluate information vendors provided in their capability statements. The Census Bureau would evaluate the information using two factors:

⁴ The information that the [REDACTED] position has been vacant since 2012 is based on several sources. First, on May 19, 2015, the Senior Employee contacted the [REDACTED] and confirmed that the position has been vacant since June 2012. Second, there is an Ernst & Young press release on [REDACTED] touting the recent hire of [REDACTED] who [REDACTED]

Third, the [REDACTED] states: "Good luck to recently retired [REDACTED] employees" and identifies [REDACTED]

Fourth, a presentation to the American Academy of Actuaries, titled [REDACTED] and dated [REDACTED] 2014, lists the [REDACTED] position as vacant.

⁵⁵ Golden Key Group, for example list statistics labor category, but the most senior position placed as someone with only 8 years of experience and did not list any senior executive positions.

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- Extensive experience and expertise in the area of recruiting executive level candidates for and within the statistical, survey, research, and education fields, preferably for the public sector.
- Having a proven record of accomplishment for networking, attracting and recruiting the best possible candidates within a high quality statistical, social science research, and public interest background.

Seven firms submitted capability statements. The Senior Employee reviewed those capability statements. The report concludes that the Senior Employee unfairly rejected Firm 5 (Korn Ferry International) and Firm 7 (Reffett Associates) (pgs. 38-39).

Contrary to the OIG's conclusion, Korn Ferry's and Reffett Associate's capability statements were deficient because neither firm's statements fit the two criteria listed above. Below is an analysis of some of the positions identified by OIG as meeting Census Bureau criteria, and the explanation for why the positions did not meet the stated criteria.


Korn Ferry. OIG points to Korn Ferry's role in placing the [REDACTED] position. This position is not a part of the [REDACTED] (which coordinates statistical and data work). Rather, the position is responsible for risk oversight, market risk related to funding and investment, commercial credit risk, and ensuring compliance with financial policies and risk control guidelines. This position does not require the type of statistical expertise as did the Census Bureau position.

OIG also points to Korn Ferry's role in placing the [REDACTED] position. This is a private, non-profit member organization whose primary goal is to enhance the global competitiveness of the U.S. and strengthen the U.S. marketplace position in the global economy. Again, this position is not a high-level statistics position.

Reffett Associates. OIG pointed to the placement of the [REDACTED] position. However, this is a regulatory position that is responsible for evaluating adherence to applicable regulations with respect to good clinical practice and clinical risk management. This is not a high-level statistics position.

OIG also identifies Reffett Associate's role in placing the [REDACTED] position. However, these are non-senior executive positions in the private sector that generally support business marketing teams related to consumer products and supporting sales strategies. They are not high-level statistics positions.

At no point during the three extensive interviews conducted by the OIG agent was the Senior Employee asked about these positions and why she reached the conclusion that they did not meet Census Bureau criteria. It seems from the OIG's report that its conclu-



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sions are drawn based on the title of the positions listed on the firms' capability statements and not on any evaluation of the substance of those positions.

Supposed Misleading Statements by Senior Employee

The OIG alleges the Senior Employee made misleading statements during the contracting process.

First, OIG claims that the statement that the Headhunter was to search for multiple positions as needed was misleading. The record does not support this finding. The justification approved by the Executive for the Purchase Request stated that as the Census Bureau transforms, executive search services are necessary for assistance and guidance in search for candidates to fill critical prospective senior executive level positions as needed. Plus, other candidates referred by the Headhunter were considered for other positions at Census. For example, [REDACTED] was identified as a possible candidate for the [REDACTED] and senior executive and scientific positions in the Office of Information Technology. Another candidate is [REDACTED]. He was identified by the Headhunter for the [REDACTED]. He was ultimately appointed to the [REDACTED]. The OIG has selectively decided to ignore these facts and omit them from its report.

Second, the report states that the Senior Employee drafted misleading statements in the Justification Document (p. 47) and also states that "the evidence points to the Senior Employee as the source of the Justification Document." (p. 11). However, the Justification Document was provided by the Acquisition Specialist, edited by both the Acquisition Specialist and Senior Employee, and certified by the Acquisition Specialist as the [REDACTED].

Third, and perhaps most troubling, the report concludes that the Senior Employee "was evasive and lacked candor in answering questions from the OIG." The report identifies *just one* supposed example of this lack of candor, hardly enough to draw a sweeping and damning conclusion about the Senior Employee.

Even if one example were sufficient to determine that a witness is evasive and lacks candor, the example cited in the report does not justify this conclusion. The OIG agent repeatedly asked the Senior Employee to identify a definite number of positions to be filled by the Headhunter as part of this contract. The Senior Employee made clear it was not a set number and gave only an estimate ("maybe . . . five positions."). The agent tried several times to have the Senior Employee give a precise number. The Senior Employee refused to do so because, as she testified, "it could be more or less than five."

Then, the agent asked if only one position would be filled in the six-month time frame, and the Senior Employee answered yes. OIG seems to conclude that this answer is inconsistent with her prior testimony that it could have filled up to five positions. It is not.



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The Senior Executive's understanding is that the Headhunter was supposed to identify a pool of qualified candidates to fill positions as needed during the course of the contract. The Senior Employee was aware that one position would likely need to be filled during that time frame [REDACTED], but other vacancies could arise because the Census Bureau was undergoing considerable leadership change. If the Headhunter identified five candidates for the [REDACTED] the four candidates not chosen as [REDACTED] would provide a pool of qualified candidates for other statistical positions at Census.

At most, the Senior Employee's answers as quoted by the report are vague and confusing. They are not intentionally misleading. The OIG does not, for example, cite any contemporaneous emails to or from the Senior Employee that contradicts her testimony.

This one example does not support the recommendation of employment consequences against the Senior Employee. The Senior Employee has had an exemplary career and was unfairly targeted by the OIG in its haste to support a pre-investigation decision that wrongdoing occurred.

If you have any questions about our response, or wish to discuss it further, please feel free to contact me.

Sincerely,

A large solid black rectangular redaction box covering the signature of the sender.

A solid black rectangular redaction box covering contact information, likely a phone number or email address.

Exhibit A

Re: Executive Search Support DIR-14... (CENSUS/... Page 1 of 2

Re: Executive Search Support DIR- REASSIGNMENT

< @census.gov >

Wed 11/27/2013 12:13 PM

To: @census.gov >:

Cc: ACQ Planning <acq.planning@census.gov>; ACQ/HQ/BOC < ACQ/HQ/BOC@BOC> @census.gov>; @census.gov>; @census.gov>; @census.gov>:

Good Afternoon,

Please note that the below action has been re-assigned to who will be acting as both and will provide ACQ support during the planning and procurement of Special Executive Search support services for PoP: 12/30/2013 - 6/30/2014. may be reached at extension 3

Please let me know if you have any questions or concerns.

Very Respectfully,

ERIMAX, Inc.
Acquisition Planning
Acquisitions Division
U.S. Census Bureau
Office: 301-763-
Email: @census.gov

ACQ/HQ/BOC wrote: -----
To: DIR/HQ/BOC@BOC
From: ACQ/HQ/BOC
Date: 11/27/2013 11:25AM
Cc: ACQ Planning/BOC@BOC, ACQ/HQ/BOC@BOC,
ACQ/HQ/BOC@BOC, ACQ/HQ/BOC@BOC
Subject: Executive Search Support DIR-

Good Morning,

The below referenced action has been assigned Action ID Number DIR-. Please reference this number, as well as the req number () on all articles pertaining to this specific action. Please be sure to submit all documentation to acq.planning@census.gov with a cc to and the

This action has also been assigned to under will provide ACQ support during the planning and procurement of

https://outlook.office365.com/owa/

5/18/2015

Re: Executive Search Support DIR-14... - [REDACTED] (CENSUS/... Page 2 of 2

Special Executive Search support services for PoP: 12/30/2013 - 6/30/2014. [REDACTED] may be reached at extension 3-[REDACTED]

DIR: [REDACTED]

Amt: \$55,000.00

Project Code: [REDACTED]

Fund Code: 0021 - WCF

PO: TBD

Vendor: TBD

Please let me know if you have any questions or concerns.

Very Respectfully,

[REDACTED] ERIMAX, Inc.

Acquisition Planning

Acquisitions Division

U.S. Census Bureau

Office: 301-763-[REDACTED]

Email: [REDACTED]@census.gov

<https://outlook.office365.com/owa/>

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Exhibit B

FedBizOps posting - [REDACTED] (CENSUS/DIR FED)

Page 1 of 1

FedBizOps posting

[REDACTED] <[REDACTED]@census.gov>

[REDACTED] 1 [REDACTED] 2014 4:29 PM

To: [REDACTED] <[REDACTED]@census.gov>;

Cc: [REDACTED] <[REDACTED]@census.gov>;

Hi [REDACTED]:

Keeping you in the loop, below is the link to the FedBizOps posting for our intent to sole source a Recruitment Services contract for the Director's Office with [REDACTED]. The posting was reviewed by our Legal Counsel and approved for posting. We gave industry until this Friday at Noon to provide response. If a response is received (capabilities statement from an interested party), I will forward for your review. In any event, it is our intent to have an award made next week (assuming we get all we need from [REDACTED] and after we have negotiated all the terms of the agreement with [REDACTED]).

[https://www.fbo.gov/?s=opportunity&mode=form&id=\[REDACTED\]&tab=core&cvview=0](https://www.fbo.gov/?s=opportunity&mode=form&id=[REDACTED]&tab=core&cvview=0)

I sent an email and left a voice message to [REDACTED] earlier today requesting a copy of their recruitment agreement so we can review and incorporate into our award. Hopefully, their agreement document details their approach, the services they will provide and the fee terms. Once I receive it, I'll also send for your review and for us to discuss prior to the final award.

We'll talk on Thursday, but do not hesitate to contact me if you have any questions before then.

Thanks

[REDACTED]
 Acquisitions Division, U.S. Census Bureau
 Phone: 301-763-[REDACTED]
 Fax: 301-763-[REDACTED]
 Email: [REDACTED]@census.gov

<https://outlook.office365.com/owa/>

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