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DEFENSE CRIMINAL INVESTIGATIVE SERVICE
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2019000746-60NV-(b) (7)(E)

October 16, 2019

UBHI, DEAP
GAVIN, VICTOR

DISTRIBUTION:

United States Attorney's Office for the Eastern District of Virginia

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REPORT OF INVESTIGATION:**Narrative:**

1. This investigation was initiated based upon information received from (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), Acquisition Law, Washington Headquarters Services (WHS), and Pentagon Force Protection Agency, Office of General Counsel (OGC), Pentagon, Washington D.C., indicating that Deap Ubhi, former GS-15 Digital Services Expert, Defense Digital Service (DDS), Pentagon, Washington, D.C.; and Victor Gavin, former Deputy Assistant Secretary of Navy for Command, Control, Communications, Computers, Intelligence, Information Operations and Space (DASN C4I/Space), Pentagon, Washington D.C.; allegedly violated the Procurement Integrity Act (PIA) and the Federal Acquisition Regulation (FAR). Specifically, (b) (6), (b) (7)(C) provided DCIS with information indicating that Ubhi and Gavin sought and negotiated employment with a potential Joint Enterprise Defense Infrastructure (JEDI) Cloud offeror, Amazon Web Services (AWS), Seattle, WA, while being personally and substantially involved in the JEDI Cloud acquisition process. Additionally, this investigation encompassed similar concerns addressed to the DoD OIG by members of the U.S. Congress and the U.S. Senate as well as allegations made by Oracle America, Incorporated (Oracle) Reston, VA, under DoD OIG Hotline complaint no. 20190321-118339, dated March 21, 2019. Oracle submitted three supplemental Hotline complaints on May 20, June 13, and September 4, 2019, respectively.

2. AWS is one of three segments operated by Amazon.com, Inc. (Amazon), Seattle, WA. AWS provides a wide range of cloud computing services to private sector companies, government agencies, and academic institutions.

3. The JEDI Cloud procurement is a single-award, Indefinite Delivery Indefinite Quantity (IDIQ), Firm Fixed Price (FFP) contract valued at not to exceed \$10 billion dollars. The period of performance of the resulting IDIQ contract is structured as a two-year base ordering period, with two option periods of three years (if exercised), and one additional option period of two years (if exercised), for a potential total of 10 years.

4. In September 2017, Patrick Shanahan, former Deputy Secretary of Defense, established a new initiative to accelerate cloud adoption through an acquisition for commercial cloud at all security classification levels and created the Cloud Executive Steering Group (CESG). At the direction of the CESG, DDS participated in multiple types of market research activities including one-on-one vendor meetings and cloud focus sessions with DoD offices and industry thought leaders.

5. DDS serves as an organization composed of commercially experienced software developers, software designers, product managers and problem solvers within DoD. DDS specializes on specific projects or programs in a "hands-on" way to materially improve DoD digital services. The Director of DDS reports directly to the Offices of the Secretary of Defense and Deputy Secretary of Defense.

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6. Shanahan directed Jay Gibson, DoD Chief Management Officer; Essye Miller, Acting DoD Chief Information Officer (CIO); Robert Daigle, Cost Assessment and Program Evaluation, and Chris Lynch, Director, DDS, to lead implementation of the initial enterprise cloud acquisition that would be known as “JEDI Cloud.” In January 2018, Shanahan established the Cloud Computing Program Office (CCPO) to support and execute JEDI Cloud and related efforts. In June 2018, the CCPO was moved under the DoD CIO.

7. On July 26, 2018, the WHS, Acquisition Directorate, Alexandria, VA, released the JEDI combined synopsis/solicitation for commercial items Request for Proposal (RFP) via RFP No. HQ0034-18-R-0077 on the Federal Business Opportunities website as a full and open competition. The RFP closed on October 9, 2018. The JEDI procurement is currently in the pre-award phase and no contract has been awarded. The objective of the JEDI Cloud acquisition is to acquire infrastructure and serve as a platform to support DoD business and mission operations.

8. From September 2018 to October 2018, Oracle filed multiple pre-award bid protests challenging the aspects of the JEDI Cloud acquisition with the U.S. Government Accountability Office (GAO), Washington, D.C. Among the issues presented by Oracle to the GAO was that the DoD failed to properly consider any potential Conflict of Interest (COI) posed by Ubhi. On November 14, 2018, the GAO issued a final decision and denied Oracle’s pre-award protests. GAO concluded the following: “(1) Agency’s determination to pursue a single-award approach to obtain cloud services under an IDIQ contract is consistent with statute and regulation where agency reasonably determines that a single-award approach is in the Government’s best interests for various reasons, including national security concerns. (2) Agency has provided reasonable support for all of the solicitation provisions that protester asserts exceed the agency’s needs; and (3) Protester’s allegations regarding conflicts of interest do not provide a basis for sustaining the protest.”

9. International Business Machines Corporation (IBM), Bethesda, MD, also filed a bid protest with the GAO on October 10, 2018. IBM asserted that the RFP provisions leading to a single-award IDIQ contract were contrary to statute and regulation; the terms of the solicitation exceed the agency’s needs; and the agency failed to properly consider potential COI. On December 11, 2018, GAO dismissed IBM’s protest because IBM allegations were similar to the assertions filed in the U.S. Court of Federal Claims (COFC), Washington, D.C. by Oracle. GAO ruled that IBM assertions were being addressed before a court of competent jurisdiction.

10. On December 10, 2018, Oracle filed a bid protest lawsuit with COFC. The bid protest expanded upon challenges Oracle previously filed with the GAO from September to October 2018. In their federal bid protest filing, Oracle claimed the contracting process was flawed and unfair, and Ubhi and Gavin were personally and substantially involved in the JEDI procurement and had underlying relationships and prejudices that caused COIs to taint the acquisition. On July 12, 2019, Senior Judge Eric Bruggink, COFC, ruled on the allegations made by Oracle, including the alleged COIs between AWS and former DoD officials. The court stated, “We conclude as well that the contracting officer’s findings that an organizational conflict of interest

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does not exist and that individual conflicts of interest did not impact the procurement were not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

11. On February 4, 2019, DCIS Agents interviewed (b)(6), (b)(7)(C) to discuss the initial COI allegations that Oracle presented to the GAO and the COFC. During the interview, (b)(6), (b)(7)(C) reported Ubhi did not influence the JEDI procurement as alleged by Oracle. She explained that the review and the decision making process used throughout the JEDI Cloud acquisition cycle was a collaborative effort across the DoD, and was unable to be manipulated or influenced by a single person.

12. Because of the complexity, contract value, and potential bid protests, the JEDI Cloud acquisition was reviewed by multiple stakeholders, including the offices of DoD Defense Procurement and Acquisition Policy and the DoD CIO to ensure the acquisition would be conducted in accordance with applicable laws and regulations. (b)(6), (b)(7)(C) emphasized that no one person had the ability to influence the many decisions that went into the development of the JEDI Cloud acquisition. As such, no single person could have influenced or steered the acquisition in a certain direction without collaboration and concurrence among the many people involved in the procurement as well as obtaining approvals at multiple levels.

13. (b)(6), (b)(7)(C) explained that prior to the solicitation phase of the acquisition, (b)(6), (b)(7)(C) WHS, Acquisitions Directorate, identified five instances in which individuals were provided access to procurement sensitive information. (b)(6), (b)(7)(C) examined these instances and conducted an investigation into potential COI concerns related to five DoD employees pursuant to the FAR Part § 3.104-7—Violations or Possible Violations. With the exception of Ubhi, DoD ethics officials concluded that no COI violation occurred because these individuals did not participate personally and substantially in the acquisition. This investigation was conducted prior to the issues raised by Oracle. (b)(6), (b)(7)(C) documented her findings in a Memorandum for the Record (MFR), “Contracting Officer’s Assessment of No Impact Under 48 CFR § 3.104-7,” dated July 23, 2018. (b)(6), (b)(7)(C) investigated the following DoD officials to determine if they violated the PIA or the FAR:

- (b)(6), (b)(7)(C)
- (b)(6), (b)(7)(C)
- Anthony DeMartino, Former Deputy Chief of Staff, Office of the Secretary of Defense & Chief of Staff, Deputy Secretary of Defense;
- Sally Donnelly, Former Senior Advisor to Secretary of Defense and Special Assistant, Office of the Secretary of Defense; and
- Deap Ubhi.

14. (b)(6), (b)(7)(C) found that the aforementioned individuals did not negatively impact the integrity of

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the JEDI Cloud acquisition. She reached her conclusion based in part from the information that they self-disclosed to DoD officials.

15. DCIS received no allegations or information conflicting with (b) (6), (b) (7)(C) conclusion regarding (b) (6), (b) (7)(C).

16. DCIS received claims indicating DeMartino and Donnelly attempted to influence the acquisition and steer the acquisition towards AWS. DCIS found that neither DeMartino nor Donnelly participated personally and substantially in the JEDI Cloud acquisition. DCIS found DeMartino's official duties included scheduling and attending meetings on behalf of the Secretary and Deputy Secretary. He provided weekly updates on DoD matters, some of which included those relative to the JEDI Cloud acquisition.

17. DeMartino did have access to JEDI Cloud's pre-decisional documents and discussions pertaining to the acquisition; however, his perfunctory role during these meetings was as a note taker. DeMartino had no input or involvement in any JEDI Cloud specific procurement documents, to include the reviewing or drafting of the Draft Solicitation Package, the Acquisition Strategy, Business Case Analysis, or other pre-decisional sensitive documents relative to the JEDI Cloud acquisition.

18. DCIS found Donnelly was never involved in matters pertaining to the JEDI Cloud acquisition. DCIS determined from witnesses and review of JEDI Cloud records, that neither DeMartino nor Donnelly had access to the DDS's Google Drive or the communications tool, known as "Slack", which were used to discuss and store procurement sensitive information and documents. DCIS also found that they did not provide any inputs into the development of the requirements for the JEDI Cloud acquisition. Both DeMartino and Donnelly resigned from the DoD prior to issuance of the JEDI Cloud RFP on July 26, 2018.

19. DCIS found no evidence indicating that Donnelly or DeMartino contacted or attempted to contact any member of the JEDI Cloud acquisition team in an effort to influence any decisions towards any particular vendor at any stage of the procurement process. Rather, both left their federal positions prior to the completion of the JEDI Cloud RFP and before proposals were received. Additionally, members of the JEDI Cloud source selection team were not identified or appointed until after Donnelly and DeMartino departed the DoD. JEDI Cloud information provided to the offices of the Secretary of Defense and the Deputy Secretary of Defense during DeMartino and Donnelly's tenure only consisted of broad pre-solicitation and status information that would not have been considered "proprietary" or "Source Selection Information."

20. Review of Ubhi's electronic Official Personnel Folder revealed he worked for the DoD from August 22, 2016 to November 24, 2017. He was hired under the President Management Agenda Smarter Information Technology Delivery initiative as a Digital Services Expert, GS-15/10. Ubhi received a temporary appointment under this program and was assigned to the DDS. Ubhi supported the DoD by bringing private sector practices, talent, and technology to

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improve the way the DoD builds and delivers software. Ubhi's major duties included digital service delivery, talent management, stakeholder engagement, and cross-departmental impact. Ubhi supported various DoD efforts including a project to streamline the Military Entrance Processing Station process. Prior to joining DDS, Ubhi worked for AWS as a Startup Manager in San Francisco, CA from approximately January 2014 to January 2016.

21. According to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was aware (b) (6), (b) (7)(C), vetted Ubhi and all members of his household about potential financial interests, upon his appointment to DDS. Based on the information that Ubhi provided, (b) (6), (b) (7)(C) determined he did not have any financial interests that could impair his ability to participate in the JEDI Cloud acquisition. The oral consultation included questions about any stock ownership and outstanding bonus or stock options. (b) (6), (b) (7)(C) explained that on September 13, 2017, 21 months after leaving AWS, Ubhi was assigned to work on the JEDI Cloud acquisition. Because greater than one year had lapsed between when Ubhi's AWS employment ended and when his participation in the JEDI Cloud acquisition started, no restrictions were attached to Ubhi's participation in the procurement as none were required.

22. Ubhi supported the JEDI Cloud acquisition from September 13, 2017 to October 31, 2017. Chris Lynch, Director, selected Ubhi to be a Product Manager on the JEDI Cloud acquisition. As a Product Manager, Ubhi was responsible for leading a team of engineers, designers, and other assigned employees to work on a particular designated project. This position differs from and is subordinate to the Program Manager who is responsible for the cost, schedule and performance of a specific project. The Program Manager has the authority to accomplish program objectives for development, production, and sustainment of systems and is accountable to the milestone decision authority.

23. Ubhi conducted market research and outreach to determine if commercial items or non-developmental items were available to meet the needs of the DoD. Market research involved contacting subject matter and industry experts who could provide information about market capabilities that would be able to meet the Government's requirements. Ubhi's market research activities were conducted before other critical steps of the acquisition cycle began.

24. Ubhi also participated in drafting the Problem Statement and the Request for Information (RFI) in support of the JEDI Cloud acquisition. However, the Problem Statement was ultimately completed by (b) (6), (b) (7)(C), DDS. (b) (6), (b) (7)(C) replaced Ubhi after his recusal on October 31, 2017.

25. On September 20, 2019, DCIS Agents interviewed (b) (6), (b) (7)(C) to discuss his role in the JEDI Cloud acquisition. (b) (5), (b) (6), (b) (7)(C)

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(b) (5), (b) (6), (b) (7)(C)
[REDACTED]26. (b) (5), (b) (6), (b) (7)(C)
[REDACTED]

27. DCIS found no evidence that Ubhi introduced any biased questions into the RFI. DCIS also found that the questions went through a rigorous technical and legal review by DDS and WHS personnel assigned to the JEDI Cloud acquisition. (b) (6), (b) (7)(C) reported that Ubhi contributed a total of eight questions to the RFI, all of which were contained within two sentences. Additionally, Ubhi did not have access to the RFI responses received on November 17, 2017.

28. DCIS found that Ubhi, as part of a three-member team, which included (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), DDS, attended five vendor meetings and met with representatives from the following companies: 1. Nutanix, 2. AWS, 3. Microsoft, 4. VMware, and 5. Google.

- On October 12, 2017, the team attended a vendor meeting with Nutanix's representatives. (b) (6), (b) (7)(C) concluded that the information Ubhi obtained during the Nutanix vendor meeting was not proprietary. Even if Ubhi revealed the information, it would not have given AWS or any other prospective offeror an unfair competitive advantage because the information was publicly available to all competitors.
- On October 18, 2017, the team attended a vendor meeting with AWS's representatives.
- On October 19, 2017, the team attended a vendor meeting with Microsoft's representatives. (b) (6), (b) (7)(C) concluded that the information Ubhi obtained during the Microsoft vendor meeting was not competitively useful. Even if Ubhi revealed the information, it would not have given AWS or any other offeror an unfair competitive advantage because the information was publicly available to all competitors and/or was related to general concepts and practices of Cloud Services.
- On October 24, 2017, the team attended a vendor meeting with VMware's representatives. (b) (6), (b) (7)(C) concluded Ubhi obtained during the VMware vendor meeting was not competitively useful. Even if Ubhi revealed the information, it would not have given AWS or any other prospective offeror an unfair competitive advantage because the information was publicly available to all competitors.
- On October 26, 2017, the team attended a vendor meeting with Google's representatives. (b) (6), (b) (7)(C) found that the information Ubhi obtained during the Google vendor meeting was not competitively useful. Even if Ubhi revealed the information, it would not have given AWS or any other offeror an unfair competitive advantage because the information was publicly available to all competitors.

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29. On October 31, 2017, Ubhi contacted (b) (6), (b) (7)(C) and said that Amazon had approached him with an interest in purchasing his start-up company Tablehero. Ubhi explained that he was the founder of Tablehero and that as the founder, he would soon be engaging in discussions with Amazon, the parent company of AWS. (b) (6), (b) (7)(C) immediately advised Ubhi to stop all work on the JEDI Cloud acquisition and contact the DoD Standards of Conduct Office (SOCO) for further guidance.

30. On October 31, 2017, Ubhi called (b) (6), (b) (7)(C), DoD Office of General Counsel, SOCO, Pentagon, Washington, D.C., and said that Amazon was interested in buying his company identified as Tablehero. (b) (6), (b) (7)(C) advised Ubhi (b) (5), (b) (6), (b) (7)(C)

31. On November 13, 2017, Ubhi submitted a letter of resignation to Chris Lynch, Director, DDS, and (b) (6), (b) (7)(C), DDS, stating that his last day with DDS would be November 24, 2017. Ubhi told Lynch and (b) (6), (b) (7)(C) that he would have to leave the DoD because he may have to work for Amazon for the business deal to be consummated. On November 6, 2017, Ubhi emailed Lynch stating: "I heard from both diligence teams today; lawyers for both deals that we're going through right now have indicated, with little room for interpretation, that I would need to be a gainfully employed FTE with the ongoing concern for the deal to be consummated. One of the deals is moving faster than the other, as they're looking to close in a few weeks, and so it seems that I have no choice but to begin planning my transition out of DDS."

32. On March 4, 2019, a second interview of (b) (6), (b) (7)(C) was conducted to discuss the content of an unsolicited letter that AWS e-mailed to (b) (6), (b) (7)(C) on February 12, 2019. The letter was marked "Confidential and Proprietary – Not Subject to FOIA", dated February 12, 2019. (b) (4)

33. AWS further stated (b) (4)

AWS extended Ubhi an offer on October 25, 2017, which Ubhi accepted on October 27, 2017. Ubhi rejoined AWS as a Senior Manager, Startup Program Management in AWS Business Development on November 27, 2017. (b) (6), (b) (7)(C) opined that Ubhi's actions may have triggered a COI violation and it warranted an external investigation by the DoD OIG. (b) (6), (b) (7)(C) also indicated that (b) (6), (b) (7)(C) was conducting a follow-up COI investigation to reassess if Ubhi's misrepresentation compromised the JEDI Cloud acquisition.

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34. On April 1, 2019, DCIS agents interviewed (b) (6), (b) (7)(C) reported that she vetted Ubhi for any COI when she served as (b) (6), (b) (7)(C). In October 2018, (b) (6), (b) (7)(C) became (b) (6), (b) (7)(C) for the JEDI Cloud acquisition. (b) (6), (b) (7)(C) said Ubhi participated personally and substantially in the JEDI acquisition. However, she explained Ubhi left DDS before the JEDI acquisition team generated and received data marked as "Source Selection Information." (b) (6), (b) (7)(C) emphasized Ubhi did not have access to information that would have given AWS a competitive advantage in the source selection process.

35. It was (b) (6), (b) (7)(C) recollection that Ubhi signed a combined Nondisclosure Agreement (NDA)/COI form before the issuance of the JEDI Cloud acquisition RFP. She opined (b) (5), (b) (6), (b) (7)(C), (b) (7)(E)

36. On April 4, 2019, DCIS Agents interviewed (b) (6), (b) (7)(C), DDS. (b) (6), (b) (7)(C) reported that he was responsible for removing Ubhi's access to the JEDI team Google Drive. He explained the JEDI Cloud acquisition team used Google Drive to store, generate, and share information in support of the acquisition. Google Drive encompasses Google Docs, Google Sheets, and Google Slides, which are a part of an office suite that permits collaborative editing of documents, spreadsheets, and presentations. Ubhi's access to the JEDI Cloud Drive was removed the same day he recused himself from the acquisition. (b) (6), (b) (7)(C) reported that there was no JEDI "Source Selection Information" or "Procurement Sensitive Data" stored on the drives during Ubhi's tenure.

37. (b) (6), (b) (7)(C) reported that the JEDI Cloud Source Selection files were stored on a separate drive within the JEDI Google Drive (b) (7)(E). He said Ubhi never had access to the files containing "Source Selection Information." The JEDI Source Selection files had an account that was only viewable by specific people, (b) (7)(E)

38. (b) (6), (b) (7)(C) was also heavily involved in the vendor meeting preparations and activities, and attended all of the vendor meetings that Ubhi attended. (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) the following information: preparations for the vendor meetings included the collaborative development of a list of scripted questions to be asked in all vendor meeting sessions, each of which was 60-90 minutes in duration. The only questions asked of the vendor were from the list that was vetted and approved via a rigorous technical and legal review. The questions were developed prior to the meetings, or were tightly scoped follow up questions germane to the original, scripted questions.

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39. (b)(6), (b)(7)(C) stated Ubhi's role in the vendor meetings, was significantly limited because the vendor meetings largely focused on technical questions. (b)(6), (b)(7)(C) advised that Ubhi was a "business-oriented person," who neither formulated nor asked technical questions. (b)(6), (b)(7)(C) related that Ubhi asked roughly "20% of the questions" (all non-technical in nature) in the vendor meetings, and did not exhibit any bias during or after the meetings via the notes. (b)(6), (b)(7)(C) stated that his review of the document history of the vendor meeting notes substantiated this recollection. According to (b)(6), (b)(7)(C) Ubhi contributed only six words for all meetings to include AWS. (b)(6), (b)(7)(C) also stated that Ubhi did not introduce any biased questions into these vendor meetings.

40. On April 11, 2019, DCIS received a copy of (b)(6), (b)(7)(C) follow-up COI investigation with the supporting documents. [REDACTED]

During the follow-up investigation, she interviewed witnesses and reviewed pertinent documents in an effort to ascertain: (1) whether anyone in the DoD knew that information used for the July MFR was inaccurate; (2) determine if the new information concerning Ubhi's AWS employment would lead anyone to adjust their opinion about whether Ubhi attempted to influence critical decisions; and (3) to obtain other previously unknown or undisclosed information.

41. (b)(6), (b)(7)(C) concluded Ubhi violated FAR 3.101-1—Standards of Conduct and may have violated 18 U.S.C. § 208—Acts affecting a personal interest, and its implementing regulations. She also determined that there was no impact on the pending award or selection of a contractor in accordance with FAR 3.104-7—Violations or Possible Violations. She found no evidence that Ubhi's participation in the preliminary stages of the JEDI Cloud acquisition planning had any substantive impact on the procurement decisions. She also assessed whether Ubhi's participation in the preliminary stages of the JEDI Cloud acquisition planning introduced any bias in favor of AWS on the procurement decisions or documents; or whether Ubhi obtained or disclosed any competitively useful non-public information. She found no evidence indicating Ubhi tainted the procurement or that he provided non-public information to AWS.

42. During the course of the follow-up investigation, (b)(6), (b)(7)(C) learned that between December 31, 2016 and August 21, 2017, Ubhi had 12 contacts with Amazon officials as he pursued business interests outside of the DoD. None of them came to fruition, and they all occurred prior to the initiation of the acquisition for a commercial cloud project. Hence, it was not relevant to her review in response to Oracle's protest. She also established, based on AWS's letter and her review, that Ubhi did provide false information to DDS and AWS while he was assigned to the JEDI Cloud acquisition.

43. (b)(6), (b)(7)(C) also received information indicating that former Department of the Navy (DON) official, Victor Gavin, participated personally and substantially in a JEDI Cloud meeting while recused from participating in particular matters pertaining to AWS. From November 2016 to June 2018, Gavin provided acquisition guidance, oversight, and policy expertise to Program

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Executive Organizations and other members of the DON acquisition community engaged in C4I, Space, and Information Technology matters.

44. (b) (6), (b) (7)(C) found that Gavin attended two meetings pertaining to the JEDI Cloud acquisition. Specifically, on October 5, 2017, Gavin attended the first pre-award JEDI meeting as part of the CESG's research into the results of existing cloud migration efforts. Gavin provided information on the DON's experience with cloud services.

45. On January 11, 2018, Gavin submitted a "Request for Disqualification from Duties" to the DON requesting to be excluded from, and relieved of, all matters and responsibilities affecting the financial interests of AWS. On January 15, 2018, Gavin interviewed with AWS, and received a job offer from AWS on March 29, 2018. Gavin accepted the job offer on April 2, 2018. Gavin retired from federal service on June 1, 2018, and joined AWS on June 18, 2018. According to AWS, his job title is Principal, Federal Technology and Business Development.

46. On April 5, 2018, Gavin attended the second JEDI Cloud meeting wherein the acquisition team briefed the draft JEDI Acquisition Strategy. (b) (6), (b) (7)(C) reported Gavin did not show any bias towards any vendor during the meeting. Furthermore, Gavin did not provide any suggested edits for the draft Acquisition Strategy document before, during, or after the meeting.

47. (b) (6), (b) (7)(C) concluded Gavin's attendance at the October 2017 meeting did not constitute personal and substantial participation in the JEDI Cloud acquisition. However, regarding the April 2018 meeting, she determined that Gavin's attendance might have constituted personal and substantial participation in the JEDI Cloud procurement because he had accepted a job offer with AWS.

48. Despite his attendance at the April 2018 meeting, (b) (6), (b) (7)(C) concluded that Gavin's actions did not impact the pending award or selection of a contractor under the JEDI Cloud procurement because his participation was in advance of the issuance of the RFP. Additionally, Gavin did not provide any inputs into or have access to nonpublic JEDI Cloud "Source Selection Information." (b) (6), (b) (7)(C) stated that the draft Acquisition Strategy was subsequently revised after April 2018, including revision to the JEDI Cost Profile. Gavin was not provided a revised version of the Acquisition Strategy.

49. On May 15, 2019, DCIS interviewed (b) (6), (b) (7)(C) to discuss whether Ubhi's and Gavin's post-Government employment created either an organizational conflict of interest (OCI) or a personal COI. She reported Ubhi misrepresented the facts about his recusal to the JEDI Cloud acquisition. According to (b) (6), (b) (7)(C) Ubhi sought and negotiated employment with AWS while being personally and substantially involved in the acquisition. Ubhi failed to recuse himself from the acquisition in a timely manner and lied to DoD ethics officials about the circumstances of his recusal. Nonetheless, she stated Ubhi's actions did not taint or jeopardize the acquisition.

50. (b) (6), (b) (7)(C) reported AWS cooperated with her office during the follow-up COI investigation.

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She stated AWS provided affidavits from Ubhi, Gavin, and AWS employees. (b) (6), (b) (7)(C) said Ubhi did not formulate the idea of having a single-award contract for this effort. She stated Ubhi and Gavin neither had the authority nor the ability to influence the implementation of a single-award strategy. (b) (6), (b) (7)(C) stated Ubhi attended meetings where officials discussed the single-award versus the multiple award decision; however, she explained they held multiple discussions and meetings about this issue after Ubhi left the DoD. She said Ubhi favored a single-award contract, although it was a common practice in the private sector to use a single-vendor cloud provider and was the collaborative opinion of the CESG.

51. (b) (6), (b) (7)(C) further explained that Ellen Lord, Under Secretary of Defense, Acquisition & Sustainment (A&S), Pentagon, Washington, D.C., was responsible for signing a Determination and Findings (D&F), dated July 19, 2018, authorizing WHS to award an IDIQ contract to a single source. The D&F is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions such as the award of an IDIQ contract to a single source.

52. According to (b) (6), (b) (7)(C) Ubhi's overall participation in the acquisition subjected him to PIA restrictions. She explained that Government lawyers assigned to the JEDI Cloud acquisition team took a conservative approach in determining which individuals participated personally and substantially in the acquisition. She advised (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), assisted her during the investigation.

53. During her follow-up investigation, (b) (6), (b) (7)(C) found that on September 29, 2017, (b) (6), (b) (7)(C), had an e-mail exchange with Ubhi regarding potential job responsibilities if Ubhi were to rejoin his team at AWS. On October 4, 2017, Ubhi responded with a "verbal commitment" to join (b) (6), (b) (7)(C) team. Concurrently in October 2017, Ubhi attended several vendor meetings and simultaneously conducted post-Government employment discussions with AWS. On October 27, 2017, Ubhi accepted an official AWS job offer and on November 27, 2017, Ubhi returned to work at AWS under (b) (6), (b) (7)(C) team.

54. (b) (6), (b) (7)(C) also explained she conducted an OCI analysis to determine whether AWS received nonpublic JEDI Cloud acquisition information, competitor information or any other information that would have provided AWS with an unfair competitive advantage over other contractors. (b) (6), (b) (7)(C) reported she reviewed AWS's OCI Plan, dated October 8, 2018, to assess what measures AWS implemented to avoid or mitigate any perceived OCI pertaining to the hiring of Ubhi. She found AWS firewalled Ubhi from AWS's JEDI proposal activities. She concluded Ubhi did not provide AWS with non-public information that would have given AWS a competitive advantage in the acquisition process, and concluded that no OCI issues were identified during the acquisition.

55. (b) (6), (b) (7)(C) told DCIS Agents that Gavin did not participate in the formulation of the JEDI Cloud

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Acquisition Strategy. Gavin was not a member of the CESG, JEDI Cloud acquisition team, or the source selection team. She reported Gavin's participation was limited to two pre-award JEDI Cloud meetings. (b)(6), (b)(7)(C) was asked why they determined Gavin may have violated the PIA and the FAR if Gavin's events occurred before AWS submitted proposals in response to the JEDI's RFP. She explained there was an expectation that AWS would submit proposals in response to the JEDI Cloud RFP. She stated Gavin did not provide AWS with non-public information that would have given AWS a competitive advantage in the acquisition process, and concluded that no OCI issues were identified during the acquisition. (b)(6), (b)(7)(C) reported that Gavin did not sign a NDA/COI form when he attended the JEDI Cloud meetings.

56. DCIS found that Gavin contacted DON officials and sought legal guidance to determine whether he was authorized to attend the April 2018 meeting. On April 5, 2018, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) Pentagon, Washington, DC, contacted (b)(6), (b)(7)(C) Associate General Counsel, DON, and asked whether Gavin's attendance would trigger a COI. (b)(6), (b)(7) provided the following guidance: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) DCIS also reviewed Gavin's OGE Form 278e, Public Financial Disclosure Report, and found that Gavin did not own "Amazon" stock.

57. On August 6, 2019, DCIS Agents interviewed (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), (b)(6), (b)(7)(C). Both stated that Gavin did not participate personally and substantially in the JEDI Cloud acquisition. Furthermore, (b)(6), (b)(7) reported that Gavin favored a multiple award strategy vice a single-award approach. She believed that the purpose of the April 2018 meeting was to discuss the JEDI Cloud Acquisition Strategy rather than matters pertaining to AWS or potential JEDI Cloud offerors. Therefore, she determined that Gavin's participation in the April 2018 JEDI Cloud meeting would not trigger a COI. (b)(6), (b)(7) and (b)(6), (b)(7)(C) also knew that Gavin was seeking and negotiating post-Government employment with DoD contractors, including AWS.

58. On August 7, 2019, DCIS Agents interviewed (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) pertaining to Gavin's post-Government employment activities. (b)(6), (b)(7)(C) recalled Gavin began seeking retirement employment around late 2016; however, then (b)(6), (b)(7)(C), requested that Gavin stay in his position until the Navy Next Generation Enterprise Networks (N-GEN) acquisition came to fruition. He said Gavin resumed seeking employment after (b)(6), (b)(7)(C) retired.

59. (b)(6), (b)(7)(C) described Gavin as a very ethical person, who avoided discussions and meetings, which may create an appearance of a COI. He said that (b)(6), (b)(7) was (b)(6), (b)(7)(C) assigned to (b)(6), (b)(7)(C). Regarding the JEDI Cloud meeting that Gavin attended in April 2018, he was shocked anyone would characterize Gavin's attendance as a conflict because it was pre-acquisition strategy. He said Gavin was against a one DoD Cloud provider and a single-award

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strategy. (b) (6), (b) (7)(C) did not believe Gavin participated personally and substantially in the JEDI Cloud acquisition.

60. DCIS Agents reviewed in consultation with Assistant United States Attorneys from the United States Attorney's Office (USAO) for the Eastern District of Virginia (EDVA), copies of all the affidavits that AWS's employees submitted to (b) (6), (b) (7)(C) in support of the follow-up investigation. (b) (6), (b) (7)(C)

61. Review of affidavits and other AWS records indicated Ubhi was hired as a Senior Manager, Startup Program Management, and his office was located in San Francisco, CA. Ubhi is a member of the AWS Worldwide Commercial Sales (WCS) group. The AWS WCS is a group separate and distinct by both role and reporting chain from the AWS Worldwide Public Sector (WWPS) group that includes the AWS JEDI team. The scope of Ubhi's role on the AWS WCS team is to define and build products that serves the needs of commercial startup companies. Ubhi does not support or interface with AWS WWPS or Government agencies. In regards to Gavin, DCIS found his current position includes business, technology, and strategy development for federal AWS customers. Review of AWS records confirmed Gavin did not participate in the preparation of AWS's JEDI Cloud proposal.

62. AWS stated that Ubhi has not (1) supported AWS WWPS; (2) been involved in any AWS JEDI proposal activities; (3) had any substantive communications regarding the JEDI procurement with any AWS employee; and (4) has not disclosed any non-public information relating to the JEDI procurement to anyone at AWS. Upon Ubhi's appointment in November 2017, AWS implemented a firewall isolating Ubhi from all of AWS's JEDI-related information and activities and restricted the JEDI Proposal Team from communicating with Ubhi. On May 11, 2018, AWS notified Ubhi of the firewall, banned Ubhi from having either direct or indirect contact with the JEDI Proposal Team, and banned him from disclosing any information related to the JEDI procurement to any AWS employee. In Ubhi's affidavit dated October 8, 2018, he stated that he complied with all aspects of the firewall and did not have any discussions with anyone at AWS about any non-public information he may have learned regarding the JEDI Cloud acquisition. (b) (6), (b) (7)(C) concluded in her follow-up investigation that from November 2017 to May 2018, an effective firewall separated Ubhi from the AWS WWPS group and the AWS JEDI team.

63. AWS reported that they notified Gavin of the firewall informally on July 26, 2018, and instructed him via e-mail on July 31, 2018, that he was strictly prohibited from disclosing any non-public information about DoD's JEDI procurement to any AWS employee. AWS included an e-mail from Gavin acknowledging the existence of the firewall. Gavin agreed to comply with the terms of the firewall. He further confirmed that he did not provide any non-public

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information with regard to the JEDI procurement prior to the initiation of the firewall. Additionally, Gavin submitted an affidavit confirming his compliance with the firewalls and that he did not, at any time, provide any non-public information regarding JEDI to anyone at AWS.

64. On June 20, 2019, DCIS interviewed (b) (6), (b) (7)(C) and stated Ubhi called him to seek ethics guidance pertaining to a potential business deal between Amazon and Ubhi's start-up company, Tablehero. (b) (6), (b) (7)(C) confirmed that Ubhi contacted him on October 31, 2017. (b) (6), (b) (7)(C) advised Ubhi (b) (5), (b) (6), (b) (7)(C).

65. (b) (6), (b) (7)(C) stated that Ubhi was not required to file the OGE Form 278e, Public Financial Disclosure Report, or the OGE Form 450, Confidential Financial Disclosure Report. Ubhi did not have a legal requirement or an obligation to notify SOCO after he initiated the alleged business discussion between Amazon and Tablehero. He also stated Ubhi did not have to consult with SOCO to seek an ethics opinion before he initiated post-Government employment discussions with AWS.

66. (b) (6), (b) (7)(C) explained that certain DoD employees have a requirement to request a written ethics opinion from the DoD SOCO regarding post-Government employment activities. This requirement applies to a DoD employee who participated personally and substantially in an acquisition with a value in excess of \$10 million and who serves or served in: (1) an Executive Schedule position; (2) a SES position; (3) Flag Officer position; or (4) in the position of program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation. Ubhi did not serve in any of the aforementioned positions.

67. (b) (6), (b) (7)(C) said Ubhi would have received the same advice whether he was negotiating employment with AWS or pursuing a business deal with Amazon. He would have advised Ubhi (b) (5), (b) (6), (b) (7)(C) was asked if Ubhi's misrepresentation constituted a false statement under 18 U.S.C. § 1001—False Statement. (b) (5), (b) (6), (b) (7)(C)

68. During the course of the investigation, DCIS interviewed: (1) DoD officials directly involved in the JEDI Cloud acquisition; (2) DoD ethics officials; and (3) former DoD co-workers of Gavin and Ubhi to determine whether these individuals influenced or compromised the acquisition. Additionally, DCIS reviewed: (1) DoD e-mail accounts; (2) JEDI Cloud acquisition documents; (3) records submitted to the GAO and the COFC by the DoD; and (4) supporting records provided to the DoD by AWS in response to the bid protests and the COI allegations.

69. DCIS examined business and employment communications that took place between Ubhi

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and AWS personnel from September 2016 to August 2017, prior to his assignment to JEDI. The results of these discussion resulted in an unsuccessful effort in the sale Ubhi's company 'Tablehero' as well as a rejected job offer. Since Ubhi was not required to file an OGE 450 and because these communications took place prior to Ubhi's assignment to JEDI, there were no statutory or other related prohibitions that required him to report such communications.

70. DCIS determined the following salient facts : (1) Ubhi engaged in employment discussions and subsequently accepted a position with AWS while assigned to support the JEDI Cloud acquisition; (2) Ubhi never mentioned or reported to the DoD that he was seeking and negotiating employment with AWS; (3) Ubhi recused himself from the JEDI Cloud acquisition and resigned from the DoD prior to receiving RFI responses, issuance of the RFP, and before any bid proposals were received; and (4) Ubhi misrepresented the actual reasons for his recusal and departure from the DoD as there were no active business discussions between AWS and Ubhi pertaining to Tablehero.

71. In accordance with 41 U.S.C. § 2103 (Actions required of procurement officers when contacted regarding non-Federal employment), an agency official who is participating personally and substantially in an acquisition over the simplified acquisition threshold must report employment contacts with bidders or offerors. Additionally, FAR 3.104-5 (b)—Disqualification, states that an agency official who must disqualify himself or herself pursuant to 3.104-3(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must: (1) Identify the procurement; (2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and (3) Identify the offeror and describe its interest in the procurement. Based on the FAR "offeror" means offeror or bidder and an "offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Consistent with COCF's ruling dated July 26, 2019, it does not appear that Ubhi violated this particular section of the FAR and Title 41 (Public Contracts) because AWS was not an offeror at the time of Ubhi's recusal from the acquisition.

72. In accordance with FAR 3.104-1 (Definitions), "Participating personally and substantially in a Federal agency procurement" means active and significant involvement of an official in any of the following activities directly related to that procurement: (1) Drafting, reviewing, or approving the specification or statement of work for the procurement; (2) Preparing or developing the solicitation; (3) Evaluating bids or proposals, or selecting a source; (4) Negotiating price or terms and conditions of the contract; and (5) Reviewing and approving the award of the contract. Ubhi may not have conducted any of the aforementioned activities when assigned to the acquisition. Ubhi departed the DoD before evaluation factors were crafted and did not provide input regarding any draft of the RFP.

73. The following table lists a chronology of significant events related to Ubhi and the JEDI Cloud acquisition.

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DATE	EVENT
January 2014 – January 2016	Ubhi worked for AWS as a cloud technology expert for Startups, Accelerators, and Incubators.
January 1, 2016	Ubhi resigned from AWS and discusses possible partnership between his company Table Hero and Amazon restaurants.
August 22, 2016	Ubhi began employment with DoD as a Digital Services Expert for DDS.
December 1, 2016	AWS declined Ubhi's Tablehero partnership.
February 7, 2017	(b) (6), (b) (7)(C) , Ubhi's (b) (6), (b) (7)(C) , met Ubhi for coffee in San Francisco, CA. Ubhi said he was contemplating leaving the DoD.
April 26, 2017	(b) (6), (b) (7)(C) introduced Ubhi by email to (b) (6), (b) (7)(C) . At the time, (b) (4), (b) (6), (b) (7)(C)
June – July 2017	Ubhi interviewed with the EMEA team in June 2017 for a position and received an offer to join the EMEA team on July 25, 2017.
June 6, 2017	Ubhi emailed (b) (6), (b) (7)(C) and Ubhi said he would like to develop a new business within Amazon. Ubhi wanted to convince Amazon's executives to get into the healthcare business.
June 9, 2017	(b) (6), (b) (7)(C) emailed Ubhi and said that Amazon has a team assigned to explore healthcare opportunities.
June 9, 2017	Ubhi replied to (b) (6), (b) (7)(C) email and said he wanted to share his thesis with them.
August 4, 2017	Ubhi declined the offer to rejoin AWS EMEA.
August 6, 2017	Ubhi emailed (b) (6), (b) (7)(C) Amazon, and presented his idea on how the healthcare business at Amazon should look like.
August 20, 2017	(b) (4), (b) (6), (b) (7)(C)
August 21, 2017	Ubhi notified (b) (6), (b) (7)(C) that there was not immediate opportunity at Amazon in healthcare and thanked him for his support.
September 2017	Deputy Secretary Shanahan issues "Accelerating Cloud Adoption" memorandum that established the CESG and tasks DDS to lead the first phase of a "cloud adoption initiative."
September 13, 2017	Ubhi was selected as a Product Manager for the JEDI Cloud procurement.
September 22, 2017	Ubhi held a telephonic discussions with his (b) (6), (b) (7)(C) , and Ubhi mentioned the possibility of rejoining AWS. Ubhi did not notify DDS officials as DDS required.

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DATE	EVENT
September 28, 2017	Ubhi wrote a message via "Slack" disclosing the number of NDAs they had on file. As of September 28, 2017, (b) (6), (b) (7)(C) , including Ubhi, submitted NDAs.
September 29, 2017	(b) (6), (b) (7)(C) emailed Ubhi about the potential responsibilities he could take on if he joins (b) (6), (b) (7)(C) team.
September 29 – October 2017	Ubhi coordinated Cloud Focus Sessions and attended meetings with DoD Components and industry leaders.
October 3, 2017	Draft Problem Statement was completed.(This version was ultimately not used.)
October 4, 2017	Ubhi emailed (b) (6), (b) (7)(C) identifying the areas he would be interested in pursuing if he were to rejoin AWS. In this communication, Ubhi referenced providing a "verbal commitment" to rejoin AWS. Ubhi did not notify DDS officials as DDS required.
October 10, 2017	(b) (6), (b) (7)(C) contacted (b) (4), (b) (6), (b) (7)(C) .
October 12, 2017	Ubhi attended a vendor meeting with Nutanix in support of market research efforts. (b) (5)
October 17, 2017	Ubhi submitted an online application for the position to join AWS and (b) (6), (b) (7)(C) team. Ubhi did not notify DDS officials as DDS required
October 18, 2017	Ubhi attended a vendor meeting with AWS in support of the JEDI Cloud acquisition.
October 19, 2017	Ubhi falsely represented to AWS that he confirmed with DoD ethics officer that he is permitted to have employment discussion with AWS, and that he does not have any government employment restrictions from dealing with any matter if Amazon were to re-employ him
October 19, 2017	Ubhi attended a vendor meeting with Microsoft in support of the JEDI Cloud acquisition. (b) (5)
October 24, 2017	Ubhi attended a vendor meeting with VMware in support of the JEDI Cloud acquisition. (b) (5)

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DATE	EVENT
October 25, 2017	AWS provided Ubhi with a formal employment offer. Ubhi did not notify DDS officials as DDS required.
October 26, 2017	Ubhi attended a vendor meeting with Google in support of the JEDI Cloud acquisition. (b) (5)
October 27, 2017	Ubhi formally accepted the AWS employment offer. Ubhi did not notify DDS officials as DDS required.
October 30, 2017	The DoD released the DoD Cloud RFI to the commercial world inquiring into available cloud computing services.
October 31, 2017	Ubhi told (b) (6), (b) (7)(C) that Amazon wanted to buy his start-up company identified as "Tablehero." (b) (6), (b) (7)(C) instructed Ubhi to consult with a DoD ethics official. (b) (6), (b) (7)(C) , DoD Office of General Counsel, SOCO, advised Ubhi (b) (5)
October 31, 2017	(b) (6), (b) (7)(C) removed Ubhi's access to the DoD Cloud Google Drive folders and Slack Conversations on "dod-cloud" and "dod-cloud-friend" channels.
November 13, 2017	Ubhi emailed a resignation letter to (b) (6), (b) (7)(C) DDS.
November 17, 2017	DoD received the RFI responses.
November 24, 2017	Ubhi resigned from the DoD.
November 27, 2017	Ubhi began employment with AWS as a Startup Program Manager.
March 7, 2018	DoD released the first draft RFP and held an industry day.
April 11, 2018	The Business Case Analysis was completed wherein the Problem Statement was included.
April 16, 2018	DoD released the second draft RFP.
July 19, 2018	The Honorable Ellen Lord, Under Secretary of Defense for Acquisition and Sustainment, signed a Determination and Finding authorizing the DoD to award an IDIQ contract to a single source.
July 26, 2018	DoD released the final RFP.
October 8, 2018	AWS submitted an Organizational Conflict of Interest (OCI) Analysis/Disclosure Form. AWS stated they avoided potential OCIs by implementing information firewalls and the two former DoD employees had any involvement in the preparation of AWS's JEDI proposal or shared any non-public, competitively useful information concerning the JEDI procurement with anyone at AWS.

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DATE	EVENT
October 8, 2018	Ubhi's affidavit stated he did not have any contact with members of the AWS's JEDI Proposal Team and he did not share non-public information pertaining to JEDI. Ubhi also stated did not provide inputs into the RFP, specifications, or other documents used by the DoD in support of the JEDI Cloud acquisition.
October 12, 2018	Proposals were received in response to the JEDI RFP.

74. In regards to Gavin, DCIS determined the following salient facts: (1) Gavin sought and obtained legal guidance prior to his attendance at the April 2018 JEDI Cloud Acquisition Strategy meeting; (2) the April 2018 meeting did not focus on any vendor or potential vendor, and that the meeting occurred prior to issuance of the RFP and before any bid proposals were received; and (3) Gavin retired prior to the release of the RFP and before the submission of JEDI Cloud proposals.

75. In regards to DeMartino and Donnelly, DCIS determined the following salient facts: (1) they did not participate personally and substantially in the JEDI Cloud acquisition; (2) they never supported the CESG, the JEDI Cloud acquisition team, or the source selection team; (3) they resigned from the DoD prior to the release of the RFP and before the submission of JEDI Cloud proposals; and (4) they never received access to folders or drives containing "Source Selection Information" pertaining to the JEDI Cloud acquisition.

76. In regards to AWS, DCIS found no evidence that AWS received, requested, or gained an unfair competitive advantage during the pre-award phase of the JEDI Cloud acquisition.

77. A copy this Report of Investigation and the full case file will be provided to the USAO-EDVA for prosecutorial determination on any potential violations of 18 U.S.C. § 208 or 18 U.S.C. § 1001 or other relevant criminal statutes.

78. There were no fraud vulnerabilities identified during the course of this investigation.

79. This investigation has been placed in a suspense status while awaiting a prosecutorial determination from the USAO-EDVA.

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Identity of Suspect(s):

Name	: Deap Singh Ubhi
Alias	: None
Social Security Number	(b) (6), (b) (7)(C)
Date/Place of Birth	
Race	
Sex	
Residence (last known)	
Employment/Occupation (last known)	
Driver's License Number and Issuing State	

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Identity of Suspect(s):

Name : Victor Gavin

Alias : None

Social Security Number

Date/Place of Birth

Race

Sex

Residence (last known)

Employment/Occupation (last known)

Driver's License Number
and Issuing State(b) (6), (b) (7)(C)Prepared by: (b) (6), (b) (7)(C)Approved by: (b) (6), (b) (7)(C)(b) (6), (b) (7)(C)

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
DEFENSE CRIMINAL INVESTIGATIVE SERVICE
TRANSNATIONAL OPERATIONS FIELD OFFICE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

2020000765-80SI (b)(7)(E)

March 9, 2020

JOINT ENTERPRISE DEFENSE INFRASTRUCTURE CLOUD

INFORMATION REPORT: On October 25, 2019, (b)(6), (b)(7)(C) Washington Headquarters Services (WHS), Acquisition Directorate (AD), Alexandria, Virginia, sent U.S. Government (USG) authored DoD Joint Enterprise Defense Infrastructure (JEDI) Cloud Microsoft Corporation (Microsoft) Technical Evaluation Board (TEB) Reports, designated as "Source Selection Information" to Amazon Web Services, Incorporated (AWS). Investigative action determined (b)(6), (b)(7)(C) release of the reports, marked "Source Selection Information," to AWS, was inadvertent. There is no evidence (b)(6), (b)(7)(C) released the reports knowingly and willfully and with any criminal intent. No criminal culpability was established and there was no criminal violation of the Procurement Integrity Act or any other relevant criminal statutes.

DoD JEDI CLOUD OVERVIEW

DoD JEDI Cloud is the enterprise-wide, general-purpose cloud-computing environment available for the DoD. JEDI Cloud provides rapid access to commercial cloud services, enabling the use of modern software practices and emerging technologies, such as artificial intelligence and machine learning. JEDI Cloud is a single-award Indefinite Delivery/Indefinite Quantity, Firm-Fixed-Price contract with a decentralized ordering system for the placement of task orders by DoD customers.

JEDI Cloud will provide enterprise-level cloud, commercial Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) offerings to support DoD business and mission operations. JEDI Cloud will also serve as a pathfinder for the DoD to understand how to deploy enterprise cloud at scale while effectively accounting for security, governance, and modern architectures. JEDI Cloud services will be offered at all classification levels.

The JEDI Cloud's guaranteed minimum is \$1 million. The contract has a two-year base period with three option periods for a total of 10 years. JEDI's total contract ceiling, if all option periods are exercised, is \$10 billion.

WHS, AD is the DoD contracting activity of record for the JEDI Cloud program.

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The DoD Chief Information Officer, Cloud Computing Program Office (CCPO) is the Requiring Office for the JEDI Cloud program.

MICROSOFT CORPORATION

Microsoft is a U.S. corporation based in Redmond, Washington. Microsoft is a registered and active U.S. Government contractor with the General Services Administration (GSA). Microsoft develops, manufactures, licenses, supports, and sells computer software, consumer electronics, personal computers, and services.

AMAZON WEB SERVICES INCORPORATED

AWS is a U.S. corporation based in Seattle, Washington. AWS is a registered and active U.S. Government contractor with the GSA. AWS is a subsidiary of Amazon that provides on-demand cloud computing platforms to individuals, companies, and governments.

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

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

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

On March 22, 2018, (b)(6), (b)(7)(C) to provide WHS, AD, support to the JEDI Cloud procurement.

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

(b)(6), (b)(7)(C) was given access to JEDI Cloud WHS, AD, acquisition information and records which included, but were not limited to, contractor bid, proposal information, technical evaluations, and other non-public information designated and marked "source selection information" as part of his official USG duties related to the JEDI Cloud procurement.

Prior to beginning work on the JEDI Cloud procurement, (b)(6), (b)(7)(C) was required to complete and certify a "Conflict of Interest and Non-Disclosure Agreement [NDA] for the Department of Defense Enterprise Cloud Initiative" form and "Confidential Financial Disclosure Report."

(b)(6), (b)(7)(C) executed and signed the NDA certifying that both now and in the future, he would not discuss or reveal non-public information related to the DoD enterprise cloud initiative to any party or individual not specifically authorized to receive such information. (b)(6), (b)(7)(C) certified he would not discuss, divulge or otherwise disclose the non-public information except as approved by the designated PCO or authorized by law. (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) possess a financial interest in any of the companies which have expressed an interest; or that market research indicates may be interested in competing as a contractor, subcontractor, joint venture partner, consultant, or team member for the cloud services solution.

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(b)(6), (b)(7)(E) executed an “OGE Form 450 - Confidential Financial Disclosure Report” wherein he certified he did not have any disqualifying financial interest which prohibited him from participating in an official government capacity in a matter in which he has a financial interest or in which (b)(6), (b)(7)(C) financial interest.

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

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

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

MICROSOFT CORPORATION PROPOSAL SUBMISSION

Microsoft submitted two proposals in response to JEDI Cloud solicitation - HQ0034-18-R-0077 to WHS, AD. Microsoft submitted an initial proposal on October 12, 2018, and their final proposal on September 5, 2019.

Microsoft’s proposals included the following disclosure statement on the title page of their proposals:

“This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government’s right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets marked with the following legend: ‘Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.’”

Microsoft marked the footer of each page of their proposals with the following statement: “Microsoft Proprietary Use of disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

Microsoft’s proposals did not contain any additional warning, distribution, or use statements and markings.

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AMAZON WEB SERVICES INCORPORATED PROPOSAL SUBMISSION

AWS submitted two proposals for the DoD JEDI Cloud in support of solicitation HQ0034-18-R-0077 to WHS, AD. AWS submitted an initial proposal on October 12, 2018, and their final proposal on September 5, 2019.

JEDI CLOUD SOURCE SELECTION PLAN & PROPOSAL EVALUATIONS

Upon receipt of Microsoft and AWS's proposals, the acquisition team reviewed them for compliance with the stated proposal preparation instructions detailed in the solicitation. The proposals were provided to TEB and Price Evaluation Board (PEB) evaluation teams where they evaluated each proposal's strengths, weaknesses, risks, and rated them. They documented their findings in written narrative reports for use by the acquisition team to include, but not limited to, the PCO, Source Selection Evaluation Board, Source Selection Advisory Council, and Source Selection Authority.

The TEB and PEB evaluation teams evaluated Microsoft and AWS's proposals in accordance to instructions and evaluation criteria detailed in the "JEDI Cloud Source Selection Plan" and "Section M - Evaluation Procedures and Factors" of the solicitation.

The evaluation teams evaluated and documented their findings in subjective narratives. The evaluation teams documented their findings in separate TEB Reports for Microsoft and AWS for Factors 1 through 8. They evaluated and wrote reports for the following factors.

Factor 1 – Gate Evaluation Criteria

- Report: Gate Evaluation Technical Evaluation Board (TEB) Report

Factor 2 – Logical Isolation and Secure Data Transfer

- Report: Factor TEB Report

Factor 3 – Tactical Edge

- Report: Factor TEB Report

Factor 4 – Information Security and Access Controls

- Report: Factor TEB Report

Factor 5 – Application and Data Housing and Portability

- Report: Factor TEB Report

Factor 6 – Management and TO [Task Order] 001

- Report: Factor TEB Report

Factor 7 – Small Business Participation Approach

- Report: Small Business Evaluation Board Report

Factor 8 – Demonstration

- Report: Factor 8 TEB Report

Factor 9 – Price

- Report: Price Evaluation Board Report

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SOURCE SELECTION REPORT MARKINGS

Per the Source Selection Plan, the evaluation teams were required to label all evaluation documents, and reports, with “Source Selection Information – See FAR 2.101 and 3.104.” The cited FAR provisions are FAR 2.101 - Definitions and FAR 3.104 - Procurement Integrity.

“Source selection information” means “any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

1. Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.
2. Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.
3. Source selection plans.
4. Technical evaluation plans.
5. Technical evaluations of proposals.
6. Cost or price evaluations of proposals.
7. Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.
8. Rankings of bids, proposals, or competitors.
9. Reports and evaluations of source selection panels, boards, or advisory councils.
10. Other information marked as "Source Selection Information" based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.”

A review of 30 reports generated by the evaluation teams revealed 10 were not marked as “Source Selection Information” or with the “JEDI Cloud Source Selection Plan” required warning. The 30 reports are marked as follows:

1. FPR [Final Proposal Revision] Re-Affirmation F2 [Factor 2] AWS.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
2. FPR Re-Affirmation F2 Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
3. FPR Re-Affirmation F3 AWS.pdf

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- NO MARKINGS
- 4. FPR Re-Affirmation F3 Microsoft.pdf
 - NO MARKINGS
- 5. FPR Re-Affirmation F4 AWS.pdf
 - NO MARKINGS
- 6. FPR Re-Affirmation F4 Microsoft.pdf
 - NO MARKINGS
- 7. FPR Re-Affirmation F5 AWS.pdf
 - NO MARKINGS
- 8. FPR Re-Affirmation F5 Microsoft.pdf
 - NO MARKINGS
- 9. FPR Re-Affirmation F6 AWS.pdf
 - NO MARKINGS
- 10. FPR Re-Affirmation F6 Microsoft.pdf
 - NO MARKINGS
- 11. FPR Re-Affirmation F7 AWS.pdf
 - NO MARKINGS
- 12. FPR Re-Affirmation F7 Microsoft.pdf
 - NO MARKINGS
- 13. TEB F8 Report AWS.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
- 14. TEB F8 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
- 15. TEB IPR [Interim Proposal Revision] F2 Report AWS.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
- 16. TEB IPR F2 Report Microsoft.pdf

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- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

17. TEB IPR F3 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

18. TEB IPR F3 Report Microsoft.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

19. TEB IPR F4 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

20. TEB IPR F4 Report Microsoft.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

21. TEB IPR F5 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

22. TEB IPR F5 Report Microsoft.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

23. TEB IPR F6 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

24. TEB IPR F6 Report Microsoft.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

25. TEB IPR F7 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information//FOUO”

26. TEB IPR F7 Report Microsoft.pdf

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- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information//FOUO”

27. Final Price Evaluation Board Report.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

28. Source Selection Evaluation Board Report.pdf

- “Source Selection Information”
- “SEE FAR 2.101 AND 3.104”

29. Source Selection Advisory Council Report .pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

30. Source Selection Decision Document (SSDD).pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information”

None of the reports incorporates the Microsoft proposal disclosure statement, or any other warning, distribution, or use statements.

INCLUSION OF MICROSOFT TECHNICAL EVALUATION BOARD REPORTS IN THE AMAZON WEB SERVICES UNSUCCESSFUL OFFEROR NOTIFICATION PACKAGE

On October 3, 2019, the Source Selection Advisory Council, after comparing the underlying benefits and pricing contained in Microsoft and AWS’s proposals, found that Microsoft’s proposal was superior to AWS’s in terms of both price and non-price factors. The council determined that Microsoft’s proposal was the best value to the Government and recommended award of the JEDI Cloud contract to Microsoft.

Following the recommendation of the Source Selection Advisory Council to award the JEDI Cloud to Microsoft, the JEDI team began planning to notify Microsoft they were the winner. Additionally, the JEDI team began planning the notification and debriefing of AWS, the unsuccessful offeror, that they had not been selected as the JEDI Cloud contract winner. Per FAR 15.506 - Postaward Debriefing, the Government was required to debrief the unsuccessful offeror, in this case AWS, in person or in writing. The JEDI team agreed to conduct the unsuccessful offeror notification and post-award debriefing to AWS simultaneously in writing via an email notification package.

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(b)(6), (b)(7)(C) assigned (b)(6), (b)(7)(C) to draft the Microsoft JEDI Cloud award and AWS unsuccessful offeror email notifications specifically the AWS “A57 - Unsuccessful Awardee Letter Draft.” (b)(6), (b)(7)(C) assigned (b)(6), (b)(7)(C) to execute administrative edits and redactions to reports that she and her acquisition (b)(6), (b)(7)(C)

Acquisition Law, WHS and Pentagon Force Protection Agency, Office of General Counsel, intended to release to the AWS as part of postaward debriefing notification (b)(6), (b)(7)(C) coordinated and began working on this tasking with (b)(6), (b)(7)(C) provided (b)(6), (b)(7)(C) the following reports to edit and redact:

1. Source Selection Evaluation Board Report
2. Final Price Evaluation Board Report
3. Source Selection Advisory Council Report
4. Source Selection Decision Document

At the time (b)(6), (b)(7)(C) was assigned to edit and redact the aforementioned reports, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had no plans to include AWS “TEB Reports (Interim Proposal Revisions Factors 2-7 & Final Proposal Revisions Factors 2-8)” in the AWS unsuccessful offeror notification package.

AWS TEB Reports were not part of the original AWS unsuccessful offeror notification package; however, (b)(6), (b)(7)(C) decided to include the AWS TEB Reports. (b)(6), (b)(7)(C) reviewed the idea of including the AWS TEB reports in the AWS unsuccessful offeror notification with (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) Defense Information Systems Agency, legal advisor to the JEDI Cloud program; both of whom concurred.

As (b)(6), (b)(7)(C) primary acquisition legal advisors, (b)(6), (b)(7)(C) accepted their recommendations and approved the release of AWS TEB Reports to AWS as part of the unsuccessful offeror notification package.

Expecting a bid protest from AWS, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) decided to release certain reports and information they would not otherwise release in a normal acquisition postaward debriefing package. (b)(6), (b)(7)(C) did not consider the JEDI Cloud program a “usual” acquisition because of the size, scope, value, complexity, congressional scrutiny, public interest, and on-going litigation. Because of this, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) decided to give “everything up front” to the unsuccessful offeror - AWS. By providing everything at once, AWS would have sufficient information to understand why the DoD did not select their proposal as the winner. Although they provided more information than usual, (b)(6), (b)(7)(C) believed their decision was compliant with the FAR. (b)(6), (b)(7)(C) was not involved in these discussions or the decision to release the AWS TEB Reports to AWS in the unsuccessful offeror package.

On October 11, 2019, per (b)(6), (b)(7)(C) recommendation and (b)(6), (b)(7)(C) approval, the AWS unsuccessful offeror letter was updated to include “TEB Reports (Interim Proposal Revisions

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Factors 2-7 & Final Proposal Revisions Factors 2-8). (b)(6), (b)(7)(C) was tasked to include “TEB Reports (Interim Proposal Revisions Factors 2-7 & Final Proposal Revisions Factors 2-8)” in the AWS notification.

(b)(6), (b)(7)(C) acknowledged he made a mistake by not specifically identifying which “TEB Reports” he wanted (b)(6), (b)(7)(C) to add to the AWS unsuccessful offeror notification package. (b)(6), (b)(7)(C) directed the inclusion of “Technical Evaluation Board Reports (Interim Proposal Revisions Factors 2-7 & Final Proposal Revisions Factors 2-8).” (b)(6), (b)(7)(C) acknowledged he did not clearly identify or specify that he only wanted AWS TEB Reports added to the AWS unsuccessful offeror notification and not Microsoft TEB Reports.

Because (b)(6), (b)(7)(C) did not clearly communicate to (b)(6), (b)(7)(C) that he only wanted AWS TEB Reports included in the AWS unsuccessful offeror notification and not Microsoft TEB Reports; (b)(6), (b)(7)(C) acknowledged he opened the door for a mistake to occur. (b)(6), (b)(7)(C) erroneously assumed that (b)(6), (b)(7)(C) would know to only include the AWS TEB Reports in the AWS unsuccessful offeror notification and not include the Microsoft TEB Reports. (b)(6), (b)(7)(C) only knew to include “Technical Evaluation Board Reports (Interim Proposal Revisions Factors 2-7 & Final Proposal Revisions Factors 2-8)” reports.

Neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) directed (b)(6), (b)(7)(C) to redact the “TEB Reports.” The “TEB Reports” were not redacted because (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) never intended to release AWS TEB Reports or Microsoft TEB Reports to their competitors. Microsoft TEB Reports were never authorized to be released to AWS or vice versa. As part of (b)(6), (b)(7)(C) goal for transparency, and to give AWS a thorough written debrief, he directed the release of the AWS TEB Reports to AWS without redactions so they could see how the Government evaluated their proposal against each factor.

(b)(6), (b)(7)(C) was “surprised” (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) added the “TEB Reports” to the AWS unsuccessful offeror notification package. In (b)(6), (b)(7)(C) previous experience, the Government did not release TEB Reports as part of the postaward debriefing (b)(6), (b)(7)(C) felt (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were releasing “too much information” as part of AWS’s postaward debriefing (b)(6), (b)(7)(C) would not have included the release of the following documents to AWS as part of their unsuccessful offeror notification:

1. AWS TEB Reports
2. Source Selection Advisory Council Report
3. Source Selection Decision Document

(b)(6), (b)(7)(C) did not challenge the release of these documents; he relied on WHS OGC’s legal advice.

On October 21, 2019, (b)(6), (b)(7)(C) created a new folder on the DDS Google Drive where he saved all the documents WHS, AD, intended to release to AWS on the day of contract award – October

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- 25, 2019. The new folder was a sub-folder in the “JEDI Cloud – Contracting Files folder.”
- (b)(6), (b)(7)(C) named the new folder “A57 – Unsuccessful Offeror Notification & Debriefing.” (b)(6), (b)(7)(C) transferred all, AWS and Microsoft, TEB Reports from the “SOLO Drive” and renamed them to match the naming convention in the “Unsuccessful Awardee Letter Draft.”
- (b)(6), (b)(7)(C) was responsible for copying and renaming the files from the “SOLO Drive” to the new folder; a process he described as cumbersome because each evaluation team used different naming conventions to identify their reports. (b)(6), (b)(7)(C) moved all TEB Initial Proposal Revisions (IPR) and Final Proposal Revisions (FPR) for both offerors and factors two through eight into the same folder.
- (b)(6), (b)(7)(C) acknowledged he made a mistake and inadvertently moved and saved Microsoft TEB Reports, the successful offeror, in the “A57 – Unsuccessful Offeror Notification & Debriefing” folder, which contained the “Unsuccessful Awardee Letter Draft” and AWS’s debriefing documents.

On October 24, 2019, (b)(6), (b)(7)(C) notified (b)(6), (b)(7)(C) that the official announcement of the JEDI Cloud contract award would take place the following day, October 25, 2019, and instructed him to report to the CCPO the next day to support contract award activities.

(b)(6), (b)(7)(C) DISCLOSURE OF MICROSOFT TECHNICAL EVALUATION BOARD REPORTS TO AMAZON WEB SERVICES

On October 25, 2019, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) arrived at the CCPO in the Pentagon and started working on the Microsoft successful and AWS unsuccessful offeror email notifications. They were the only two people involved with these activities.

- In addition to the notifications to Microsoft and AWS, there were a myriad of other activities that had to occur at specific times, by specific people, and to specific audiences. These activities are documented in the “Enterprise Cloud: Contract Award Roll-Out Schedule v2.6.” (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were required to notify Microsoft and AWS at 4:45 P.M. per the rollout schedule listed below:

Time Frame (DD-MM)	Action	OPR	Audience
D -24	Transmittal of Report to Congress	Comptroller	Congress
1300 hours (1:00pm)	Advanced warning email to Congress about 1700 award notification and 1715 call	OSD(LA)	Congress
1400 hours (2:00pm)	Build agenda for vendor phone call	(b)(6), (b)(7)(C)	
1645 hours (4:45pm)	Notify Both Offerors	Cloud Contract Officer	Offerors
1645 hours	Notify SD/DSD/LA/PA of Award	DoD CIO	OSD

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(4:45pm)			
1650 hours (4:50pm)	Notify Scarif and Team via email		Team JEDI
1650 hours (4:50pm)	Send Unsanitized PA Plan to everybody	(b)(6), (b)(7)(C)	CIO Front Office
1700 hours * (5:00pm)	Email Congress about Award	OSD(LA)	Congress
1700 hours * (5:00pm)	Email DoD Principals about Award	DoD CIO	Internal to DoD
1700 hours * (5:00pm)	Notify DOJ about Award	Cloud Attorney	DOJ
1700 hours * (5:00pm)	Publish press release on Defense.gov	OSD Public Affairs	Press
1715 hours * (5:15pm)	Phone call with PSMs	DoD CIO ICW OSD(LA)	Congress
1745 hours * (5:45pm)	Call with Department CIOs	DoD CIO	DoD CIOs
1805 hours * (6:05pm)	Call with Team JEDI (b)(6), (b)(7)(C) PIN: (b)(6), (b)(7)(C)		Team JEDI
1900 hours (7:00pm)	Vendor Phone Call with successful vendor	(b)(6), (b)(7)(C)	Vendor
1930 hours (7:30pm)	Send 72 hour email to successful vendor		Vendor

* (Location) CIO Front Office

With (b)(6), (b)(7)(C) approval, and on her behalf, (b)(6), (b)(7)(C) prepared and organized the Microsoft successful and AWS unsuccessful offeror notification emails with attachments, using her laptop computer and her DDS Google Gmail account. (b)(6), (b)(7)(C) downloaded the notification attachments to (b)(6), (b)(7)(C) computer and optimized the files in Adobe to reduce the file size so they could be sent more easily through email.

Once (b)(6), (b)(7)(C) completed optimizing the file attachments, he drafted the email notifications using pre-approved language and uploaded the optimized files to the email as attachments. (b)(6), (b)(7)(C) conducted a cursory review of the emails for verbiage. Neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) opened the email attachments to confirm they were the correct attachments. (b)(6), (b)(7)(C) sent a test email to a Google Gmail account to ensure the sizing of each email was under 25 Megabytes (MB); the emails were sent successfully without incident.

(b)(6), (b)(7)(C) did not specify to (b)(6), (b)(7)(C) she only wanted AWS TEB Reports included in the AWS unsuccessful offeror email notification and not Microsoft TEB Reports. (b)(6), (b)(7)(C) only knew to include "Technical Evaluation Board Reports (Interim Proposal Revisions Factors 2-7 & Final Proposal Revisions Factors 2-8" reports)." The enclosure list did not specify AWS TEB Reports, it only specified TEB Reports. (b)(6), (b)(7)(C) erroneously assumed (b)(6), (b)(7)(C) would have known to only

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include AWS TEB Reports in the AWS unsuccessful offeror notification and not to include Microsoft TEB Reports.

When it was time to notify Microsoft of contract award and AWS of their unsuccessful offer, (b)(6), (b)(7)(C) asked (b)(6), (b)(7)(C) “Are you sure all of the attachments are here?” (b)(6), (b)(7)(C) responded, “Everything on that enclosure list is attached to the emails.” (b)(6), (b)(7)(C) proceeded to send Microsoft their successful offeror award notification.

To their surprise, the first set of emails bounced back as undeliverable due to exceeding email size restrictions. In an attempt to rectify the problem, (b)(6), (b)(7)(C) divided the award notification into three emails containing the attachments. This unforeseen problem took longer than expected to rectify. Again, neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) opened the attachments to confirm they were the correct attachments.

Neither (b)(6), (b)(7)(C) CCPO; (b)(6), (b)(7)(C) were present in the CCPO (b)(6), (b)(7)(C) was unable to reach them to ask for additional time to release the notifications or to ask about consequences if they did not meet the 4:45 P.M. deadline.

(b)(6), (b)(7)(C) conducted a risk analysis and decided to move forward with the notifications and the dissemination of the emails and attachments as scheduled. Because simultaneous JEDI activities were to occur per the schedule upon contract award at 4:45 P.M. and (b)(6), (b)(7)(C) was not in telephonic contact with the various parties who were going to execute their post contract award activities, any delay on her part in sending the notifications at 4:45 P.M., would not be communicated to the other JEDI team members.

(b)(6), (b)(7)(C) was concerned her JEDI teammates would execute their assigned duties after 4:45 P.M. even if (b)(6), (b)(7)(C) was unable to execute the contract award at 4:45 P.M. (b)(6), (b)(7)(C) was fearful that if she did not make the Microsoft and AWS notifications on time, it would create unforeseen problems when the other parties completed their assigned tasks – public posting of the award, Congressional and senior DoD official notifications, etc. Because of this, she made the decision to send the Microsoft and AWS notifications without conducting the detailed review she should have.

Making a decision to move forward on contract award, (b)(6), (b)(7)(C) instructed (b)(6), (b)(7)(C) to send the award notification to Microsoft. (b)(6), (b)(7)(C) successfully transmitted the emails to Microsoft officially notifying them they had won the JEDI Cloud contract. The Microsoft award notifications were successful transmitted by 4:46 P.M.; however, they were now behind schedule.

(b)(6), (b)(7)(C) successfully sent Microsoft three emails containing the following reports:

1. “Award Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation”

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- JEDI Cloud ID/IQ Contract
- Two Task Orders (TO 001 & TO 002)
- J-1: Price Catalogs
- J-2: PWS for ID/IQ
- J-3: Contractor Discounts, Premiums, and Fees
- J-4: Small Business Subcontracting Plan
- J-5: Licenses and Service Level Agreements
- J-6: JEDI Cloud Cyber Security Plan
- J-8: Definitions
- J-9: Contract Data Requirements Lists (CDRLs)
- J-10: Small Business Participation Commitment Document

Following notification of contract award to Microsoft, (b)(6), (b)(7)(C) started working on the AWS unsuccessful offeror notification emails using (b)(6), (b)(7)(C) laptop computer and her DDS email account. (b)(6), (b)(7)(C) conducted a cursory review of the emails for verbiage. Neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) opened the email attachments to ensure they were the correct attachments. (b)(6), (b)(7)(C) initially prepared the emails with attachments to go out in batches of 25 MBs; however, AWS's email server limit was 20MB. (b)(6), (b)(7)(C) transmitted the emails, to AWS, on (b)(6), (b)(7)(C) behalf; however, the emails bounced back as undeliverable due to exceeding email size limitations.

(b)(6), (b)(7)(C) had to prepare a new set of email notifications and proceeded to separate the AWS notification emails into eight separate emails with attachments divided amongst the emails to meet email file size restriction limits. Neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) opened the attachments to confirm they were correct. This took longer than expected and put them further behind schedule. (b)(6), (b)(7)(C) successfully transmitted the AWS unsuccessful offeror notification emails by 5:57 P.M.

(b)(6), (b)(7)(C) successfully sent AWS eight emails containing the following attachments:

1. "Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation //First Email"
2. "Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Second Email" with the following attachments:
 - "1. FPR Re-Affirmation F2 Microsoft.pdf"
 - "1. FPR Re-Affirmation F2 AWS.pdf"
 - "1. FPR Re-Affirmation F3 Microsoft.pdf"
 - "1. FPR Re-Affirmation F3 AWS.pdf"
 - "1. FPR Re-Affirmation F4 AWS.pdf"
 - "1. FPR Re-Affirmation F4 Microsoft.pdf"
 - "1. FPR Re-Affirmation F5 AWS.pdf"
 - "1. FPR Re-Affirmation F5 Microsoft.pdf"
 - "1. FPR Re-Affirmation F6 AWS.pdf"

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- “1. FPR Re-Affirmation F6 Microsoft.pdf”
 - “1. FPR Re-Affirmation F7 AWS.pdf”
 - “1. FPR Re-Affirmation F7 Microsoft.pdf”
3. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Third Email” with the following attachments:
 - “1. TEB F8 Report AWS.pdf”
 - “1. TEB F8 Report Microsoft.pdf”
 - “1. TEB IPR F3 Report AWS.pdf”
 - “1. TEB IPR F3 Report Microsoft.pdf”
 - “1. TEB IPR F4 Report AWS.pdf”
 - “1. TEB IPR F4 Report Microsoft.pdf”
 - “1. TEB IPR F5 Report AWS.pdf”
 - “1. TEB IPR F5 Report Microsoft.pdf”
 - “1. TEB IPR F6 Report AWS.pdf”
 - “1. TEB IPR F6 Report Microsoft.pdf”
 - “1. TEB IPR F7 Report AWS.pdf”
 - “1. TEB IPR F7 Report Microsoft.pdf”
 4. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Fourth Email” with the following attachment:
 - “1. TEB IPR F2 Report AWS.pdf”
 5. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Fifth Email” with the following attachment:
 - “1. TEB IPR F2 Report Microsoft.pdf”
 6. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Sixth Email” with the following attachment:
 - “2. Final Price Evaluation Board Report.pdf”
 7. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Seventh Email” with the following attachment:
 - “3. Source Selection Evaluation Board Report.pdf”
 8. “Notification // HQ0034-18-R-0077 JEDI Cloud Solicitation // Eight Email” with the following attachments:
 - “4. Source Selection Advisory Council Report.pdf”
 - “5. Source Selection Decision Document (SSDD).pdf”

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(b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) acknowledged they conducted a cursory review of the Microsoft and AWS email notifications and attachments; however, they confirmed they did not open the attachments to confirm they were the correct attachments. They explained their cursory review of the emails was hindered by the laptop's small screen size. The small screen size did not allow them to easily see and read the full name of each of the attached files. Because there were so many attachments in the email, the last part of the attachment file name was not visible and could not be read.

The file naming convention delineated the difference between documents related to AWS and Microsoft; however, the naming delineation, "AWS" or "Microsoft," was listed at the very end of the file name, for example, "TEB F8 Report AWS.pdf" and "TEB F8 Report Microsoft.pdf." (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) confirmed they could only see the first part of the attachment file name and could not see if the attachment file name was for an AWS or Microsoft report.

(b)(6), (b)(7)(C) acknowledged he was the responsible party who prepared the email notifications, attached the attachments, and transmitted the notification packages to Microsoft and AWS. (b)(6), (b)(7)(C) acknowledged she assigned (b)(6), (b)(7)(C) to execute the aforementioned activities on her behalf. As the PCO, and in accordance to her duties as delineated in FAR 1.602-2 – Responsibilities, (b)(6), (b)(7)(C) was ultimately responsible.

At the conclusion of the day, nobody, to include (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), or (b)(6), (b)(7)(C) realized the AWS unsuccessful offeror email notifications included Microsoft FPR and TEB Reports.

POSTAWARD DEBRIEFING - AMAZON WEB SERVICES

On October 29, 2019, (b)(6), (b)(7)(C) AWS, submitted a list of debriefing questions to the DoD pursuant to their rights under FAR 15.506 - Postaward Debriefing of Offerors and National Defense Authorization Act Section 818 - Enhanced Post-Award Briefing Rights.

Following the receipt of AWS's questions, AWS AD and CCPO team members met to review AWS's questions. (b)(6), (b)(7)(C) was the first person to realize something was wrong. (b)(6), (b)(7)(C) checked the emails he sent AWS on October 25, 2019 and realized he had accidentally included Microsoft FPR and TEB Reports in the AWS email. The team concurred with his assessment and realized AWS received and appeared to have used the Government authored Microsoft FPR and TEB reports to write their AWS debriefing questions.

(b)(6), (b)(7)(C) acknowledged he included and transmitted the following Microsoft FPR and TEB to AWS on October 25, 2019:

1. FPR Re-Affirmation F2 Microsoft.pdf

- "Source Selection Information – See FAR 2.101 and 3.104."

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- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
2. FPR Re-Affirmation F3 Microsoft.pdf
 - NO MARKINGS
 3. FPR Re-Affirmation F4 Microsoft.pdf
 - NO MARKINGS
 4. FPR Re-Affirmation F5 Microsoft.pdf
 - NO MARKINGS
 5. FPR Re-Affirmation F6 Microsoft.pdf
 - NO MARKINGS
 6. FPR Re-Affirmation F7 Microsoft.pdf
 - NO MARKINGS
 7. TEB F8 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 8. TEB IPR F2 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
 9. TEB IPR F3 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
 10. TEB IPR F4 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 11. TEB IPR F5 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”
 - “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”
 12. TEB IPR F6 Report Microsoft.pdf
 - “Source Selection Information – See FAR 2.101 and 3.104.”

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13. TEB IPR F7 Report Microsoft.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information//FOUO”

In addition to the eight Microsoft reports marked as “Source Selection Information,” (b)(6), (b)(7)(C) also sent an additional 12 AWS FPR and TEB reports that were also marked as “Source Selection Information” to AWS. The Government, via (b)(6), (b)(7)(C) and approved by (b)(6), (b)(7)(C) sent the following 12 documents marked as “Source Selection Information” to AWS as part of their unsuccessful offeror notification:

1. FPR [Final Proposal Revision] Re-Affirmation F2 [Factor 2] AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

2. TEB F8 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

3. TEB IPR [Interim Proposal Revision] F2 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

4. TEB IPR F3 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

5. TEB IPR F4 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

6. TEB IPR F5 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

7. TEB IPR F6 Report AWS.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

8. TEB IPR F7 Report AWS.pdf

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- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information//FOUO”

9. Final Price Evaluation Board Report.pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “UNCLASSIFIED//FOR OFFICIAL USE ONLY//PROCUREMENT SENSITIVE//SOURCE SELECTION INFORMATION”

10. Source Selection Evaluation Board Report.pdf

- “Source Selection Information”
- “SEE FAR 2.101 AND 3.104”

11. Source Selection Advisory Council Report .pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”

12. Source Selection Decision Document (SSDD).pdf

- “Source Selection Information – See FAR 2.101 and 3.104.”
- “Source Selection Information”

(b)(6), (b)(7)(C) disclosure of records to AWS did not include any pages from Microsoft’s JEDI Cloud proposals. (b)(6), (b)(7)(C) release only included Government authored reports.

PROCUREMENT INTEGRITY ACT VIOLATION

Investigative action confirmed (b)(6), (b)(7)(C) released “Source Selection Information” to AWS.

(b)(6), (b)(7)(C) action is consistent with a potential violation of the Procurement Integrity Act wherein the Procurement Integrity Act prohibits the release of source selection and contractor bid or proposal information. Specifically, the Procurement Integrity Act prohibits a present or former employee of, or person acting on behalf of or advising, the U.S. on a procurement, who has or had access to such information shall not disclose it before the award of the contract to which the information relates. No person shall knowingly obtain such information before the award of the contract to which the information relates.

(b)(6), (b)(7)(C) on the JEDI Cloud procurement, had authorized access to JEDI Cloud procurement information marked as “Source Selection Information.” (b)(6), (b)(7)(C) admitted he disclosed JEDI Cloud information marked as “Source Selection Information” via three emails he sent on October 25, 2019, to the following AWS employees, interested parties to the procurement:

- (b)(6), (b)(7)(C) DoD, AWS
- (b)(6), (b)(7)(C) Federal Government, AWS
- (b)(6), (b)(7)(C) AWS

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- (b)(6), (b)(7)(C) AWS

Although (b)(6), (b)(7)(C) acknowledged disclosing “Source Selection Information” to AWS, (b)(6), (b)(7)(C) did not provide “Source Selection Information” to AWS before the award of the JEDI Cloud contract. (b)(6), (b)(7)(C) disclosure of “Source Selection Information” to the AWS employees occurred after contract award had been made to Microsoft.

(b)(6), (b)(7)(C) disclosure of “Source Selection Information” did not violate the Procurement Integrity Act. (b)(6), (b)(7)(C) did not release “Source Selection Information” before the award of the JEDI Cloud contract to which the information relates. Additionally, investigative efforts revealed no evidence that (b)(6), (b)(7)(C) release of “Source Selection Information” to AWS was done with any criminal intent.

(b)(6), (b)(7)(C) did not obtain JEDI Cloud “Source Selection Information” before the award of the JEDI Cloud contract. Instead, AWS interested parties; obtained JEDI Cloud “Source Selection Information” from the USG via (b)(6), (b)(7)(C) unsuccessful offeror notification emails after the contract was awarded to Microsoft.

The AWS employees did not obtain JEDI Cloud “Source Selection Information” through theft, unauthorized access, trickery, or deception.

DEROGATORY INFORMATION

Investigative action was executed to determine if there was any derogatory information and evidence to contradict (b)(6), (b)(7)(C) assertion that his disclosure of Government authored Microsoft FPR and TEB reports to AWS was an “honest mistake” and not executed deliberately, knowingly, willfully, and with any criminal intent. No derogatory information was identified.

(b)(6), (b)(7)(C) reported he did not have any outside employment activities. A review of Maryland, Virginia, and Washington, D.C. wage determination records did not identify any outside employment income from any outside business activities. WHS reported they did not have any outside employment request for (b)(6), (b)(7)(C)

A review of Maryland, Virginia, and Washington, D.C. wage determination records for (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (b)(6), (b)(7)(C) In accordance to the NDA and OGE Form 450 (b)(6), (b)(7)(C) filed to participate on the JEDI Cloud procurement, he notified (b)(6), (b)(7)(C) of

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

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

(b)(6), (b)(7)(C) The Defense Counterintelligence and Security Agency, Defense Vetting Directorate, Department of Defense Central Adjudication

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Facility, reported (b)(6), (b)(7)(C) has never had his security clearance suspended or revoked. (b)(6), (b)(7)(C) most recent background investigation did not identify any derogatory information.

A review of (b)(6), (b)(7)(C) Defense Enterprise Email and DDS Google Gmail accounts was conducted. No derogatory email communications were noted.

Neither (b)(6), (b)(7)(C) are in or have filed any federal bankruptcies.

Criminal and financial queries were conducted. No derogatory information was identified.

Interviews of personnel who worked with (b)(6), (b)(7)(C) on the JEDI Cloud procurement were conducted. They did not have anything negative to report about (b)(6), (b)(7)(C). They considered (b)(6), (b)(7)(C) release of Government authored Microsoft FPR and TEB reports to be an inadvertent mistake and accident.

Certain law enforcement database queries were conducted that are not reportable in this document.

DEFENSE PRICING AND CONTRACTING INDEPENDENT REVIEW

Following the disclosure of the Microsoft TEB Reports to AWS, Thomas Muir, Director, WHS, requested the Defense Pricing and Contracting (DPC), Office of the Under Secretary for Acquisition, and Sustainment, to conduct an independent review of the disclosure of Microsoft technical information to AWS. On November 1, 2019, DPC executed an independent review.

The DPC independent review team concluded that both the JEDI leadership team made mistakes as well as members of the source selection team, and the contracting staff. These mistakes led to the disclosure of information to AWS, which they found to be inadvertent. The review found no evidence that there was a deliberate intent to release Microsoft information to AWS. The team concluded the “disclosure was a regrettable, yet direct fall-out of human error, prompted and made significantly more likely by individuals being asked to perform what ought to be painstaking and deliberate work in a rushed context, where the time pressures were a function of deadlines imposed without real cause.”

STATUS OF INVESTIGATION

Investigative action determined (b)(6), (b)(7)(C) release of Microsoft technical information to AWS was accidental. There is no evidence (b)(6), (b)(7)(C) covert act coincided with any criminal intent nor was it premeditated or deliberate. Furthermore, there is no evidence (b)(6), (b)(7)(C) made a conscious decision to deliberately engage in an unlawful or negligent act, or to harm someone else. (b)(6), (b)(7)(C) disclosure does not constitute a criminal violation of the Procurement Integrity Act or any other federal statute. This matter is closed.

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Prepared by: SA (b)(6), (b)(7)(C)

Approved by: SAC (b)(6), (b)(7)(C)

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

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DEPARTMENT OF DEFENSE
DEFENSE CRIMINAL INVESTIGATIVE SERVICE
NORTHERN VIRGINIA RESIDENT AGENCY
4800 MARK CENTER DRIVE – SUITE 10D25-04
ALEXANDRIA, VIRGINIA 22350

2019000746-60NV- (b)(7)(E)

April 10, 2019

JOINT ENTERPRISE DEFENSE INFRASTRUCTURE
Alexandria, VA 22311

INFORMATION REPORT/DOCUMENTS RECEIVED: On April 10, 2019, Special Agent (b)(6), (b)(7)(C) DCIS, Northern Virginia Resident Agency, received via email documents to include an Organizational Conflict of Interest (OCI) Final Report of Investigation (ROI) as well as a Contracting Officer's Reassessment of Potential Procurement Integrity Act (PIA) Violation and Impact Final Report from (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) Office of General Counsel (OGC), Washington Headquarters Service (WHS), Pentagon, Washington D.C. (Attachment). The OCI ROI, and PIA Impact report was produced by (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) Joint Enterprise Defense Infrastructure (JEDI) (b)(6), (b)(7)(C) for the enterprise-wide JEDI Cloud acquisition (b)(6), (b)(7)(C) for the Enterprise Office of the Secretary of Defense division of the Washington Headquarters Services Acquisition Directorate. The documents provided by (b)(6), (b)(7)(C) gave insight into early discussions of JEDI and also addressed the OCI allegations of former Defense Digital Service (DDS) employee Deap Ubhi (Ubhi). The reports thoroughly addressed Ubhi's role regarding JEDI, provided a timeline of when he was there and when he began to discuss possible jobs etc. with Amazon Web Services (AWS). (b)(6), (b)(7)(C) concluded from her investigation that no OCI existed with regards to Ubhi, there was no violation of the PIA, and no competitive advantage was gained by AWS during the procurement process.

Attachment:

OCI ROI and PIA Violation and Impact Report conducted by (b)(6), (b)(7)(C) received from (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) WHS-OGC on April 10, 2019.

Prepared by: SA (b)(6), (b)(7)(C) 60NV

Approved by: Acting RAC (b)(6), (b)(7)(C) 60NV

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

DISTR: HQ

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DEFENSE CRIMINAL INVESTIGATIVE SERVICE
WASHINGTON, D.C. RESIDENT AGENCY
4800 MARK CENTER DRIVE, SUITE 10D25-04
ALEXANDRIA, VIRGINIA 22350-1500

2020000063-60DC- (b)(7)(E)

March 2, 2020

CUMMINGS, STACY A.
SES, Pentagon, Washington, D.C. 22202

INFORMATION REPORT/CLOSED: On October 4, 2019, the DCIS, Washington, D.C. Resident Agency, received a referral from the DoDIG Hotline, Complaint No. 20191004-060742-CASE-01, in reference to allegations against Stacy Cummings, Principal Deputy Assistant Secretary of Defense, Office of the Under Secretary of Defense for Acquisition & Sustainment, Office of Acquisition Enablers. (Attachment 1) It was alleged that Cummings' involvement with the Joint Enterprise Defense Infrastructure (JEDI) Cloud acquisition may have violated Title 18 United States Code (U.S.C.) § 208, Acts Affecting a Personal Interest, due to her ownership of Microsoft stock. DoDIG, Investigations of Senior Officials (ISO), and DoDIG, Audit were also involved in the investigation of this matter.

(b)(6), (b)(7)(C) Washington Headquarters Services (WHS), Acquisition Directorate, Enterprise Office of the Secretary of Defense, was interviewed and stated that (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) for JEDI. (Attachment 2) (b)(6), (b)(7)(C) stated the JEDI acquisition related to an enterprise wide DoD procurement for general cloud computing and storage services. It was determined that the JEDI contract would be a 10 year Indefinite Delivery/Indefinite Quantity (IDIQ) single vendor award contract with a monetary ceiling value of \$10 Billion.

(b)(6), (b)(7)(C) stated that in October 2017, at the start of the JEDI procurement process, the Defense Digital Services (DDS) was responsible for developing the requirements for JEDI. Sometime later, oversight for the JEDI procurement was transferred to the DoD Office of the Chief Information Officer (OCIO). In mid/late 2019, the Cloud Computing Program Office was stood up, and became the office in which program management for JEDI would be housed. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) for OCIO's Cloud Computing Program Office (CCPO), JEDI.

The award of the JEDI contract came down to two vendors, Microsoft and Amazon Web Services (AWS). On September 27, 2019, the Source Selection Evaluation Board Chair (SSEB) signed the final technical report regarding the JEDI procurement. On October 3, 2019, the Source Selection Authority Counsel (SSAC) signed the final technical and pricing report. On October 17, 2019, (b)(6), (b)(7)(C) United States Army, Network Enterprise Technology Command, agreed with the recommendations and signed the final report as the

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

On October 25, 2019, the JEDI contract was awarded to Microsoft.

When asked about Cummings' involvement with JEDI, (b)(6), (b)(7)(C) stated Cummings participated in high-level meetings related to acquisition strategy, and these activities all occurred at the very end stages of the JEDI procurement process. Specifically, in September 2019, Cummings attended several meetings related to JEDI as a representative from the Office of the Under Secretary of Defense for Acquisition & Sustainment. As the JEDI (b)(6), (b)(7)(C) was tasked with performing an independent investigation to determine whether Cummings' role in the JEDI acquisition and the alleged conflict of interest had an impact on the pending award or selection for the vendor. (b)(6), (b)(7)(C) Investigation found that Cummings' actions did not impact the pending award or selection of the vendor. (b)(6), (b)(7)(C) continued stating that under the JEDI acquisition, Cummings had no information about the specifics of the JEDI source selection activities, (b)(6), (b)(7)(C) and she did not provide direct input into the actual options presented to Deputy Secretary of Defense David Norquist. (Attachment 3)

Peter Ranks, Deputy Chief Information Officer (CIO), DoD OCIO, was interviewed and stated that on August 14, 2019, he had his first communication with Cummings regarding JEDI. (Attachment 4) Specifically, on behalf of Under Secretary of Defense Ellen Lord, Office of the Under Secretary of Defense for Acquisition & Sustainment, Cummings reached out to Ranks to obtain an update regarding the timeline of the JEDI acquisition. Ranks advised this was not an uncommon practice, especially due to the high visibility of the JEDI acquisition.

Ranks advised that on or around September 13, 2019, he reached out to Cummings in order to obtain her acquisition expertise regarding the JEDI program. Ranks indicated that OCIO was developing multiple options related to the JEDI contract; these options were going to be presented to Secretary of Defense Mark Esper. (Attachment 5) These options included various alternative approaches the DoD could implement regarding JEDI, to include, restarting the entire procurement process. During his meetings with Cummings regarding the JEDI options, Ranks stated she suggested that contracting officials and attorneys be brought into the meetings in order to provide their respective expertise.

While preparing the options for Secretary Esper, Ranks was informed that Cummings had Microsoft stock above the minimum threshold, and she may have a potential conflict of interest as it related to matters associated with JEDI. Ranks stated that no source selection information was discussed with Cummings.

(b)(6), (b)(7)(C) was interviewed and confirmed information provided by (b)(6), (b)(7)(C) and Ranks. (Attachment 6) (b)(6), (b)(7)(C) stated that Cummings' role with JEDI was solely from a programmatic standpoint; she (Cummings) had nothing to do with source selection. While developing options for Secretary Esper, Cummings made a suggestion regarding the contract's option years;

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specifically, she suggested that in order for the vendor to exercise option years associated with the contract, DoD could highlight the importance of the vendor's duty to display high performance ratings. In essence, the vendor would not be simply granted the additional option years. (b)(6), (b)(7)(C) advised that Cummings' suggestion was not included as an option provided to Secretary Esper.

In an effort to ensure everyone involved with JEDI, to include those assisting in developing options for Secretary Esper, had proper ethics documentation in place (i.e. Non-Disclosure Agreements (NDAs) and verifying Office of Government Ethics (OGE) Form 278, Executive Branch Personnel Public Financial Disclosure Report, etc.), (b)(6), (b)(7)(C) stated that on or around September 26, 2019, a decision was made to double-check everyone's status regarding ethics requirements. After these checks were completed, (b)(6), (b)(7)(C) was informed that Cummings may have had a potential conflict of interest based on her ownership of Microsoft stock. On September 27, 2019, (b)(6), (b)(7)(C) received notice that Cummings recused herself from all matters associated with JEDI.

A review of Cummings' 2019 OGE Form 278 revealed that she maintained Microsoft stock valued at "\$15,001 - \$50,000." (Attachment 7) Additionally, Cummings maintains stocks in similar monetary amounts with the following entities: (1) Apple, Inc.; (2) Chevron Corporation; (3) Johnson & Johnson; (4) Proctor and Gamble; (5) Starbucks Corporation; (6) Walt Disney; (7) Tesla, Inc. (8) The Coca-Cola Company; and (9) variety of mutual fund accounts, bonds, money market accounts, financial institutions, etc.

A review of Cummings' Disqualification Statement – Financial Interest (Recusal Letter) revealed that on September 27, 2019, Cummings notified DoD that she had a financial interest in Microsoft, and she immediately recused herself from matters involving JEDI. (Attachment 8)

Cummings was interviewed and stated although she was aware that she had stock with Microsoft, she did not believe she was required to recuse or disqualify herself from the JEDI matter because she was not a decision maker as it related to the acquisition and she did not participate in the source selection of the vendor. (Attachment 9) Additionally, Cummings said she would disagree that she maintained a substantial role in the JEDI acquisition. Furthermore, Cummings stated she in no way believed she had a lasting impact on the JEDI program. Cummings believed she followed all rules, procedures, and processes.

Cummings stated she was very familiar with ethics training and submitting financial disclosure forms, to include, the OGE Form 278 and OGE Form 450, Confidential Financial Disclosure. Cummings confirmed that she filled out and signed her 2019 OGE Form 278. Additionally, Cummings informed that for approximately 10 years, she and her spouse have owned stock with Microsoft. Cummings advised that she and her spouse are approaching retirement, and as such, from approximately late summer 2019 through December 2019, they sold some of their stocks in order to transfer funds into more stable financial markets. Cummings recalled that she and her

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spouse sold approximately \$5,000 from many of their stocks, to include, Microsoft. A review of Cummings' 2019 OGE Form 278-T confirmed that Cummings reported the sale of several stocks on July 3, 2019, including the sale of Microsoft stock in the amount of \$1,001 - \$15,000. (Attachment 10)

Cummings stated that in September 2019, she had meetings with Ranks regarding JEDI and options that were to be presented to Secretary Esper concerning the program; she provided her expertise concerning acquisition policies and procedures. Cummings advised Ranks that she was not a contracting expert, and in order to obtain information regarding that area of expertise, Cummings suggested that Ranks consult with contracting officials. Cummings advised that during these meetings concerning JEDI: (1) No source selection information was shared with her; (2) she was not a decision maker in the acquisition process; (3) she had no knowledge regarding the JEDI proposal evaluation process; (4) she had no knowledge regarding the JEDI source selection committee; and (5) she had no knowledge regarding the SSA.

Cummings stated when she reviewed the options that were to be presented to Secretary Esper, she made two suggestions: (1) Collapse some of the information in one option into another because much of the information was duplicative; and (2) have a "robust communication strategy" as it related to performance of the contract; specifically, communicate to the public that in order for the vendor to exercise option years, performance would be highly rated and reviewed. Cummings recalled during a meeting in late September 2019, (b)(6), (b)(7)(C) asked everyone present, if it was not already done, to sign an NDA. Cummings advised she had another meeting to attend and did not stay for the entire meeting. Subsequently, on or around September 27, 2019, Cummings received a telephone call from (b)(6), (b)(7)(C)

DoD Office of General Counsel, Standards of Conduct Office (SOCO), who advised that she (Cummings) had Microsoft stock above the minimum threshold, and she may have a potential conflict of interest as it related to matters associated with JEDI. Cummings told (b)(6), (b)(7)(C) that she (Cummings) could sell the Microsoft stock; however, Irvine advised Cummings to recuse herself from all matters related to JEDI. Upon receiving this advice, Cummings recused herself from all JEDI matters.

(b)(6), (b)(7)(C) was interviewed and stated she was responsible for submitting the DoDIG Hotline Complaint regarding Cummings' possible violation of conflict of interest. (Attachment 11) According to (b)(6), (b)(7)(C) Cummings' role and participation in the JEDI acquisition was very limited. (b)(6), (b)(7)(C) advised that Cummings did not perform any of the five activities that would constitute participating personally and substantially in a Federal agency procurement, as defined in the Federal Acquisition Regulation Part 3.104-1-Definitions. These activities consists of the following: (1) Drafting, reviewing, or approving the specification or statement of work for the procurement; (2) preparing or developing the solicitation; (3) evaluating bids, proposals, or selecting a source; (4) negotiating price or terms and conditions of the contract; and (5) reviewing and approving the award of the contract. However, (b)(6), (b)(7)(C) that Cummings' limited role in the acquisition may have constituted personal and substantial participation in the JEDI

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procurement based on 5 Code of Federal Regulations (CFR) §2635.402(b)(4) – Disqualifying financial interest, which states that personal and substantial participation may occur when an employee provides recommendations or renders advice in a particular matter.

Cummings' supervisor, Kevin Fahey, Assistant Secretary of Defense for Acquisition, Office of the Under Secretary of Defense for Acquisition & Sustainment, was interviewed and confirmed that Cummings' only involvement in the JEDI acquisition was to provide input on how to proceed from an overall acquisition strategy and evaluating various acquisition pathways; there would have been no discussions regarding particular vendors. (Attachment 12) Fahey also confirmed that Cummings was not involved in the source selection criteria or the source selection evaluation process. Fahey stated while Cummings was an advisor to the JEDI acquisition process, she in no way played a role in the decision to select Microsoft.

Based on the aforementioned witness and subject testimony, as well as supporting documentation, there was no evidence that Cummings violated Title 18 U.S.C. § 208, Acts Affecting a Personal Interest. Cummings had no access to source selection information and she did not play any role in influencing the decision to award the contract to a particular vendor.

This matter was presented to the United States Attorney's Office (USAO) for the Eastern District of Virginia (EDVA) for prosecutorial determination. On March 2, 2020, USAO EDVA declined prosecution of this matter.

This matter is closed.

Attachments:

1. DoDIG Hotline Complaint No. 20191004-060742-CASE-01, dated October 3, 2019
2. DCIS Form 1 – Interview of (b)(6), (b)(7)(C) dated January 22, 2020
3. DCIS Form 1 – Receipt of Memorandum for Record (“Contracting Officer’s Assessment of Ms. Cummings’s No Impact Under 48 CFR § 3.104-7,”) dated October 25, 2019
4. DCIS Form 1 – Interview of Peter Ranks, dated February 4, 2020
5. JEDI Options PowerPoint
6. DCIS Form 1 – Interview of (b)(6), (b)(7)(C) dated January 29, 2020
7. Cummings’ OGE Form 278
8. Cummings’ Recusal Letter, dated September 27, 2019
9. DCIS Form 1 – Interview of Stacy Cummings, dated February 2, 2020
10. DCIS Form 1 – Cummings’ OGE Form 278 (Transactions)
11. DCIS Form 1 – Interview of (b)(6), (b)(7)(C) dated November 1, 2019
12. DCIS Form 1 – Interview of Kevin Fahey, dated February 6, 2020

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Prepared By: (b)(6), (b)(7)(C)

Approved by: (b)(6), (b)(7)(C)

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

DISTR: DoDIG ISO; DoDIG Audit

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