

*Office of the*  
**INSPECTOR GENERAL**



REPORT OF INVESTIGATION

File Number: 09-069

Agency: Georgia Department of Administrative Services

Basis for Investigation: Agency Request

Allegations: Conflict of Interest

Date Opened: July 9, 2009

Investigated By: Deborah W. Copeland  
Deputy Inspector General

Date of Report: October 2, 2009

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**Elizabeth P. Archer, Inspector General**

## OFFICE OF THE INSPECTOR GENERAL



File Number: 09-069

### EXECUTIVE SUMMARY

In July 2009, Department of Administrative Services (DOAS) officials contacted the Office of the State Inspector General (OIG) regarding a potential conflict of interest involving a DOAS solicitation. Specifically, OIG investigated whether a state employee involved in the solicitation engaged in improper communications with a vendor in violation of DOAS's "No Contact" policy. The employee, a member of the Evaluation Committee responsible for reviewing vendor proposals, received a request for his resume from one of the participating vendors and did not notify the Contracting Officer.

OIG conducted numerous interviews, reviewed official files, documents, policies, procedures, correspondence and applicable state rules and regulations.

OIG found that although an improper communication occurred between the state employee and the vendor, the solicitation process itself was not compromised. We found that a lack of clarity in DOAS's Evaluation Committee Member Form regarding "direct contact" and in the "no contact" provision of the RFP directly contributed to the actions taken by the state employee and the vendor.

OIG offers the following recommendations to the DOAS. We request that DOAS provide a written response regarding implementation of these recommendations within 30 days of the issuance of this report.

1. DOAS should include language on their Evaluation Committee Member Form which defines "direct contact." The definition of direct contact should include, without limitation, any interaction with vendors such as personal meetings, telephonic communications, letters, faxes, and emails.
2. DOAS should include language in RFPs which expands the current "no contact" provision to include direct contact of any kind between a vendors and any employee known to the vendor personally concerned or participating in the solicitation process, with the exception of the Contracting Officer. The definition of direct contact in the RFP should mirror the language defined in the Evaluation Committee Member Form.

However, this prohibition does not include contacts with state employees solely for the purpose of existing ongoing work unrelated to the solicitation.

3. DOAS should extend the “no contact” provision through the Notice of Award stage in order to prevent improper communication.
4. DOAS should include a provision in their Evaluation Committee Member Form which addresses future employment with vendors. Suggested language: Any employee who is solicited by a vendor that is involved in any matter in which the employee is directly concerned or personally participating on behalf of a state entity and who intends to pursue discussions regarding future employment with the vendor, or who has been solicited by the vendor for employment, shall promptly report the information to his supervisor and the Contracting Officer. The agency may consider removing the employee from the solicitation process.



**Report of Investigation**

**File No. 09-069**

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**Summary of Actions**  
**Georgia Department of Administrative Services**  
**File Number 09-069**

**I. BASIS FOR INVESTIGATION**

In July 2009, Department of Administrative Services (DOAS) officials contacted the Office of the State Inspector General (OIG) regarding a potential conflict of interest<sup>1</sup> involving a DOAS solicitation. Specifically, OIG investigated whether a state employee involved in the solicitation engaged in improper communications with a vendor in violation of DOAS's "No Contact" policy.

**II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION**

OIG conducted numerous interviews, reviewed official files, documents, policies, procedures, correspondence and applicable state rules and regulations.

**III. NARRATIVE**

**A. BACKGROUND**

DOAS is the unit of state government that serves as the centralized procurement function for Georgia's state entities. DOAS is responsible for establishing contracts, leases, and purchase orders in order to obtain products and services for the state. The agency contracts with a variety of private sector businesses and works to ensure all vendors have equal access to contract opportunities. Brad Douglas serves as the current Commissioner of DOAS.

The employee named in this complaint, Alan Adams, began working for the Georgia Department of Corrections (DOC) as a probation officer in 1976. Throughout his 34 years at DOC, Adams worked as deputy warden, division director, and assistant commissioner. Most recently, Adams was Director of Health Services at DOC's central office. As Health Services Director, Adams directed the office responsible for overseeing the correctional health care system. Adams retired on May 1, 2008, but returned to his position at DOC in a part time capacity, three weeks later, at the request of former Commissioner Donald. Adams continued to work for the department until July 1, 2009, when he officially resigned.

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<sup>1</sup> The Governor's Code of Ethics Executive Order states, "An employee of the Executive Branch of the State shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the employee's ability to protect the public interest, or perform public duties, is compromised by personal interests. An appearance of conflict could exist even in the absence of a true conflict of interest."

## **B. DOAS's PROCUREMENT FOR AN ELECTRONIC MEDICAL RECORDS SYSTEM**

In August 2008, DOC approached DOAS officials regarding an agency solicitation for an Electronic Medical Records (EMR) system, a web based system that assists agencies that deliver healthcare services to shift from paper-based medical records to electronic medical records.<sup>2</sup>

Shortly after DOC expressed interest in EMR, DOAS learned that Kennesaw State University (KSU) and Georgia State University (GSU) were also interested in implementing an EMR system. As a result, DOAS began efforts to establish a statewide contract. The contract would be available to other Georgia governmental entities as well as local governments, including municipalities, cities, townships, counties and other political subdivisions.

In order to develop the Request for Proposals (RFP), DOAS established a CORE sourcing team comprised of eight (8) state employees. The employees chosen were management stakeholders from different agencies and possessed subject matter knowledge in specific areas such as health care, information technology, procurement, and program management. The members dialogued with DOAS and their respective agencies to develop the RFP.

As required by DOAS's standard protocol, a "no contact" provision was included in the RFP under the "Instructions to Offerors" section. The provision requires that vendors refrain from communicating with state employees concerning the subject matter of the procurement, with the exception of the DOAS Contract Specialist. The provision was effective from the date DOAS issued the RFP (October 28, 2008) until the posting of the Notice of Intent to Award (April 30, 2008).<sup>3</sup> DOAS reserved the right to reject any proposal for violation of this provision.

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<sup>2</sup> There is a national focus on EMR stemming from the Health IT for Economic and Clinical Health (HITECH) Act included in the American Recovery and Reinvestment Act (ARR) of 2009. Because there is a call for it to be operational on a national level by 2014, states are aggressively pursuing deployment of EMR to modernize healthcare systems.

<sup>3</sup> Significant contract dates

Release of Request for Proposal	October 28, 2008
Deadline of Written Questions	November 5, 2008
Response to Written Questions	November 10, 2008
Proposals Due	December 12, 2008
Evaluation Team Consensus Meetings/ Eval Score Consensus	Jan 15, 16, 21, 2009
Proposal Evaluation End (Demos Included)	February 12, 2009
Cost Proposal Discussion with Core Team	February 23, 2009
Start of Negotiations Team	March 9, 2009
Notice of Intent to Award	April 30, 2009
Notice of Award	May 15, 2009

On October 28, 2008, DOAS posted the RFP on the Georgia Procurement Registry. DOAS required all qualified vendors to submit their proposals by December 12, 2008. DOAS received bids from ten (10) vendors, including Business Computer Applications, Inc. (BCA), the vendor named in this complaint.

To assist in the selection and award process, DOAS created an Evaluation Committee comprised of seven (7) state employees, including Adams. The committee members were individually responsible for reviewing and scoring each of the ten (10) bids using strict parameters set forth by the DOAS Contracting Officer. The committee also worked together as a group to develop a consensus score for each proposal.

The Contracting Officer was responsible for overseeing the solicitation and providing guidance and clarification to the Evaluation Committee. After the committee members completed their scoring, DOAS invited the two highest scoring vendors (BCA and E-Clinical) to conduct a live demonstration of their performance abilities to designated state officials, including the Evaluation Committee members. Authorized site visits to the vendors' facilities also occurred.

On April 30, 2009, DOAS announced their Notice of Intent to Award the statewide EMR contract to BCA. The public announcement, which posted to the Georgia Procurement Registry, allowed opportunity for Open Records requests or protests to be made. DOAS subsequently announced the Notice of Award on May 15, 2009 to BCA, who received the highest technical score.

### **C. INVESTIGATION**

***Allegation: "Did DOAS Evaluation Committee Member Alan Adams engage in improper communications with BCA during the solicitation process in order to secure employment with them after he officially resigned from state employment?"***

As part of our investigation, we interviewed Beverly Alexander, DOAS's contracting officer responsible for overseeing the solicitation of the EMR contract. According to Alexander, in July 2009, Danika Tynes, BCA's Director of Southeast Business Development, informed her that Adams had accepted a position with BCA effective July 1<sup>st</sup> to work on the EMR account. Alexander stated that Tynes was BCA's representative who interfaced most closely with DOAS officials during the solicitation process.

Because Adams accepted a position with BCA so soon after the award of the contract, it "raised a red flag" with Alexander. She informed Tynes that his employment caused her concern that DOAS's no contact provision may have been violated and that Adams' employment could be viewed by other vendors as BCA having an inside advantage. Tynes replied that if Adams' employment was a problem, BCA could assign him to another account. Upon learning of Adams' employment with BCA, Commissioner Douglas asked OIG to investigate the circumstances of Adams' employment to ensure that the solicitation process was not compromised. Our investigation revealed that after learning of OIG's investigation, Tynes contacted Alexander and offered to rescind Adams' offer of employment in order to continue on with the contract.

When asked if DOAS has any specific policies or procedures pertaining to the solicitation process, Alexander stated that strict guidelines are set forth in the Georgia Vendor Manual.<sup>4</sup> The manual contains specific guidelines concerning restrictions on communication with state staff during a solicitation.<sup>5</sup> In addition, she stated that the RFP document<sup>6</sup> sent to all vendors included the communication restrictions.

Alexander stated that the Georgia Procurement Manual also contains administrative rules that govern the solicitation process. According to Alexander, DOAS requires all Evaluation Committee members to sign a DOAS Evaluation Committee Member Participation Form<sup>7</sup> attesting to their responsibilities during the solicitation. While the form restricts direct contact between committee members and vendors, the form is not specific as to what “direct contact” entails. Our investigation confirmed that Adams signed his form in December 2008.

According to Alexander, an “extraordinary” amount of work went into the EMR solicitation by members of the CORE Team, Evaluation Committee, and DOAS officials. She described the solicitation process as “by-the-book and above-board by all parties.” She stated that the members of the Evaluation Committee individually scored the vendors’ technical proposals, and countless hours were dedicated to reaching a consensus.

During the process, Alexander stated that Adams did not advocate for any particular vendor. She stated that BCA submitted the proposal most advantageous to the State and provided the best overall value. BCA’s proposal also received the highest overall technical score. It was evident to Alexander at the time of their demonstration that BCA outperformed the other vendors. In addition, during the contract negotiation period, BCA was able to reach mutually agreeable contract terms with the State.

OIG reviewed all of the evaluators’ technical scores for each vendor to determine whether there was any evidence of favoritism. We found that Adams’ scores were

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<sup>4</sup> The manual assists vendors in their understanding of state guidelines, should they engage in business with the state.

<sup>5</sup> Section 5.3 of Georgia Vendor Manual: Restriction on Communication with State Staff –From the issue date of the solicitation document and until a contractor is selected and the selection is made public, vendors are not allowed to communicate for any reason with any State staff regarding this procurement except through the issuing officer named in the solicitation document or during the bidders/offerors conference, or as provided by existing contracts.

<sup>6</sup> The RFP contained a similar restriction in Section 6: From the date that this RFP is issued until a firm is selected and the selection is announced, firms are not allowed to communicate for any reason with any State employee other than the Contracting Officer listed above regarding this RFP except during the pre-proposal conference or any required oral presentations.

<sup>7</sup> DOAS Evaluation Committee Participation Forms section entitled “Contact with Vendors Restricted” states, “The member understands that committee members are strictly prohibited from participating in individual meetings, lunch, entertainment, or any other direct contact with vendors after appointment to the evaluation committee. If a member’s job requires contact with a vendor that has submitted a response to the solicitation, the member may work with the vendor as required by the job duties, however, the member is strictly prohibited from discussing the solicitation responses under evaluation. Otherwise, any contact with vendors will be conducted through the Issuing Officer Any questions from vendors or anyone else must be referred to the Issuing Officer conducting the solicitation.”

consistent with the other evaluators. In fact, in some areas, Adams scored BCA lower than the other evaluators scored BCA.

As part of our investigation, we interviewed CORE Sourcing Team and Evaluation Committee members<sup>8</sup> who worked closely with Adams during the solicitation process. Those interviewed stated that the evaluation process was an “equitable and competitive process for all vendors.” They stated Adams came across as a “neutral and fair professional” during the evaluation process, and at no time did he try to influence the outcome of any decision. According to members of the Evaluation Committee, each of them carried the same scoring weight. Our investigation confirmed that no one member had the authority to make the final selection. In addition, no committee members were aware of any personal or financial interest that Adams had in this solicitation that could have compromised his actions.

We asked members of the CORE Team and Evaluation Committee whether they were aware of any communication between Adams and any vendor during the evaluation process, particularly BCA. We also inquired as to whether they had knowledge of any contact that Adams may have had with BCA outside of their scheduled meetings. All of the members interviewed witnessed no improper contact between Adams and any vendor. In fact, they stated that Adams informed them of his employment situation with BCA when he resigned from DOC in late June 2009.

In addition to interviewing a number of witnesses, our investigation included a forensic review of Adams’ computer files to determine if he had any improper communication with BCA during the solicitation. Our review found that on January 15, 2009, Tynes sent an email to Adams stating that her CEO was interested in receiving a copy of Adams’ curriculum vitae. We found no evidence of any response from Adams on his state computer. However, on May 11, 2009, after the contract was awarded, Adams forwarded his resume in an email to Tynes. In the email, he stated that he hoped she could get his resume in the “right person’s hands.” A subsequent email revealed that on May 26, 2009, Adams wrote Tynes to thank her for setting up an interview on May 22, 2009, with her, BCA’s CEO, and Vice President of Customer Support. Adams, who referred to them as his “bosses,” expressed excitement about his future at BCA.

OIG requested that BCA provide all documentation regarding any employment offer and/or agreement they had with Adams. We also requested BCA’s business expense reports for the period of January 1, 2008, to the present in order to determine whether there was any interaction with Adams during the solicitation process.

BCA responded to our request through counsel and provided copies of email communication between Tynes and Adams. They also provided a copy of an offer of employment letter to Adams dated June 23, 2009, referencing a planned start date of July 20, 2009. However, noticeably absent from the email communication we received from BCA was the email Tynes sent Adams requesting his resume.

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<sup>8</sup> A total of seventeen (17) witnesses were interviewed during OIG’s investigation.

The only business expense statement BCA could provide covered the period from May 5, 2008 to May 30, 2008, five months prior to the issuance of the RFP. The expense statement referenced a lunch for a group of people from the Medical College of Georgia, DOC and BCA. Although Adams was present at the group luncheon, he did not have any one-on-one interaction with BCA.

OIG interviewed Tynes regarding her history with Adams. According to Tynes, she first met Adams shortly after she started working with BCA in April 2008, when she made a “cold call” to DOC to determine if they were interested in EMR. At the time, Adams was the Health Services Director. Her next interaction with Adams occurred in May 2008, when BCA conducted a live demonstration of their EMR product for DOC Health Services and the Medical College of Georgia. It was late October 2008, after DOAS announced to vendors that they were beginning the procurement process, when she spoke with Adams again. She stated that the reason for her call was to inform Adams that BCA was submitting an RFP for the statewide contract. She recalled seeing Adams again when BCA conducted a live demonstration at DOAS in the West Tower on February 2009.

When asked about the email she sent Adams on January 15, 2009, requesting his resume, Tynes stated that she was aware that Adams was retiring from DOC and thought he might be a good fit for BCA. After conferring with her CEO, she sent the referenced email to Adams. According to Tynes, although she was aware of the no contact provision, she did not know that Adams was a DOAS Evaluation Committee member at the time she sent him the email. Tynes stated that it was not until May 11, 2009, after DOAS announced the Notice of Intent to Award the EMR contract to BCA on April 30, 2009, that she actually received a resume from Adams.

Throughout her interview, Tynes denied communicating with Adams about the pending solicitation. She stated that all communication she had with Adams during the solicitation process related to general industry and/or telemedicine topics. However, she admitted that the DOAS Contract Specialist advised her/BCA that any contact concerning the EMR proposal, solicitation process, demonstrations, etc. should occur only between Alexander and BCA.

According to Tynes, she and BCA’s CEO, along with BCA’s VP for Customer Support, interviewed Adams for a position with BCA in late May 2009. BCA subsequently offered Adams a job as a Senior Project Manager.<sup>9</sup> Adams’ start date was July 20, 2009.

During his interview, BCA’s CEO Albert Woodard, confirmed Tynes approached him about Adams being a “possible fit” for BCA. He stated that as CEO, he is “always open to anyone with leadership skills and experience with EMR.” However, he informed Tynes that he did not think the time was appropriate to interview Adams because at the time, BCA was involved in the solicitation process with the State. According to Woodard, the “appropriate time” would have been after the contract was awarded. He acknowledged receipt of Adams’ resume in mid-May 2009. He also acknowledged interviewing Adams and subsequently offering him a position.

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<sup>9</sup> A position responsible for ensuring implementation of EMR systems within client organizations.

When interviewed, Adams stated that at the time he received Tyne's email, he was fulfilling his employment arrangement with DOC through June 2009. Based on discussions with the current DOC Commissioner, Adams expected to become a contract employee with DOC after June 2009. However, the passage of House Bill 202 caused him to seek employment outside of state government. Our investigation confirmed that HB 202 specifies that retired employees are subject to a two-month break in service and the 1040-hour calendar year work limitations if rehired as contractors or employees for the state.

When asked if he sent his resume to any other companies, Adams stated that he had sent resumes to about eight different organizations. Our forensic review confirmed that on the day he sent Tyne's resume, he also sent his resume to numerous companies in the private sector. In addition, on May 11<sup>th</sup> he submitted his official resignation to DOC effective June 30<sup>th</sup>.

Throughout his interview, Adams stated that he took his professional responsibilities with DOC and the State very seriously. He stated that at all times he acted with integrity and avoided any improper action that would have "tainted" the process. However, he admitted that in "hindsight," he should have reported Tyne's request for his resume to his supervisor at DOC and DOAS officials to prevent the perception of a conflict of interest.

#### **IV. CONCLUSION**

OIG finds that although BCA initiated the communication with Adams during the solicitation process, Adams should have reported the unauthorized contact to the DOAS Contracting Officer to prevent the appearance of impropriety. One could infer that by requesting his resume, BCA intended to influence Adams during the course of this solicitation process. Thus, we find the communication improper.

We also find that the lack of clarity in DOAS's Evaluation Committee Member Form regarding "direct contact" and in the "no contact" provision of the RFP directly contributed to the actions taken by both BCA and Adams. However, although this communication occurred, documents reviewed and interviews conducted revealed that the solicitation process itself was not compromised. Evidence revealed that Adams did not attempt to influence the opinions of fellow committee members, did not advocate for BCA, and did not have the authority to make the final selection without group consensus.

Although the improper communication between Adams and BCA did not directly violate state laws or policies in this particular instance, steps should be taken to ensure that State employees refrain from actions that appear to undermine public confidence.

## V. RECOMMENDATIONS

OIG offers the following recommendations to the Georgia Department of Administrative Services. OIG requests that DOAS provide a written response regarding implementation of these recommendations within 30 days of the issuance of this report.

1. DOAS should include language on their Evaluation Committee Member Form which defines “direct contact.” The definition of direct contact should include, without limitation, any interaction with vendors such as personal meetings, telephonic communications, letters, faxes, and emails.
2. DOAS should include language in RFPs that expands the current “no contact” provision to include direct contact of any kind between a vendors and any employee known to the vendor personally concerned or participating in the solicitation process, with the exception of the Contracting Officer. The definition of direct contact in the RFP should mirror the language defined in the Evaluation Committee Member Form. However, this prohibition does not include contacts with state employees solely for the purpose of existing ongoing work unrelated to the solicitation.
3. DOAS should extend the “no contact” provision through the Notice of Award stage in order to prevent improper communication.
4. DOAS should include a provision in the Evaluation Committee Member Form which addresses future employment with vendors. Suggested language: Any employee who is solicited by a vendor that is involved in any matter in which the employee is directly concerned or personally participating on behalf of a state entity and who intends to pursue discussions regarding future employment with the vendor, or who has been solicited by the vendor for employment, shall promptly report the information to his supervisor and the Contracting Officer. The agency may consider removing the employee from the solicitation process.