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**OFFICE OF THE INSPECTOR GENERAL  
NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE**

(b) (3) - P.L. 86-36

**To:** Chief, D14 [redacted]  
**From:** [redacted] Senior Investigator

**Date:** 9 January 2015

**Subject:** [redacted] Preferential Treatment

(b) (3) - P.L. 86-36  
(b) (6)

**File No:** IV-14-0050

**Precedence:** Routine

**Purpose:** To provide a summary report of investigation, and to recommend that this case be closed.

**Details:**

**I. (U) Background**

(S//NF) On 29 July 2013, the OIG received allegations that [redacted] demonstrated preferential treatment for relatives and friends, by creating a civilian billet for a relative and bringing a personal friend (unqualified labor) onto the [redacted] contract. It was further alleged that [redacted] used the [redacted] contract for the performance of inherently governmental functions, by giving contractors direction and control of federal employees and allowing contractors to commit government resources.

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**II. (U) Issue(s)**

1. (S//NF) Did [redacted] demonstrate preferential treatment for a relative [redacted] by creating a civilian billet for him?
2. (S//NF) Did [redacted] demonstrate preferential treatment for a friend [redacted] by influencing his selection for a contract?
3. (S//NF) Did [redacted] use the [redacted] contract for the performance of inherently governmental functions?

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(b) (6)

CL BY: [redacted]  
CL REASON: 1.4(c)  
DECL ON: 20320118  
DRV FROM: [redacted]

(b) (1)  
(b) (3) - 50 USC 3024(i)  
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(S)

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- **(U) 5 CFR, § 2635.101 (a,b), Basic Obligation of Public Service, General Provisions**

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

... (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

... (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

- **(U) Federal Acquisition Regulation 3.101 Standards of Conduct, General**

(U) Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

- **(U//FOUO) NSA/CSS PMM, Chapter 366, Section 1-3, (G), General Principles for On-The-Job Conduct**

1-3. (U//FOUO) Generally, every employee is expected to:

...

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G. (U//~~FOUO~~) Act impartially and not give preferential treatment to any private organization or individual;

• (U) Federal Acquisition Regulation, Part 7–Acquisition Planning, Subpart 7.5–Inherently Governmental Functions

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

(7) The direction and control of Federal employees.

(12) In Federal procurement activities with respect to prime contracts-

(i) Determining whether supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

IV. (U) Investigative Activity

A. (U) Document Review

1. ~~(S)~~ Statement of Work. The NSA OIG reviewed the [redacted] Statement of Work, dated 17 February 2011. The statement of work outlines the tasks necessary to provide [redacted] program with

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2. ~~(C//NF)~~ Personnel Records. On 15 May 2014, the OIG requested records related to the advertisement and selection of [redacted]

[redacted] stated that she was unsuccessful in locating staffing information dating back to that time period.

(b) (1)  
(b) (3)-50 USC 3024(i)  
(b) (3)-P.L. 86-36

B. (U) Interviews

(b) (3) -P.L. 86-36

1. (C/NF) [redacted] former Chief [redacted] [redacted] (2009-2013), was interviewed on 13 December 2013, and provided the following sworn testimony:

(S/NF) *Allegation of Preferential Treatment for a Relative.* In 2008, [redacted] and [redacted] where they were also serving together: [redacted] and [redacted] are cousins.

[redacted]

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(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36  
(b) (6)

(S/NF) *Allegation of Preferential Treatment for a Friend/Contractor.* [redacted] learned that [redacted] was helping [redacted] with repairs in his home, either as a really good friend or a relative. [redacted] was also helping out with repairs to [redacted] home. [redacted]

[redacted]

[redacted] believed that [redacted] had been hand-picked for the contract.

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(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36

(b) (3) -P.L. 86-36

(S/NF) *Allegation of the Use of Contractors for Inherently Governmental Functions.* [redacted] favors contract employees. When contractors repeatedly refuse to do as instructed by the "staffer in charge" [redacted] comes to the defense of the contractor rather than the government individual. [redacted]

[redacted]

(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36  
(b) (6)

(C/NF) [redacted] was interviewed on 4 April 2014 and 27 October 2014 and he provided the following sworn testimony:

(S/NF) *Allegation of Preferential Treatment for a Relative.* When [redacted] came to [redacted] his cousin and [redacted] was

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already on staff. [redacted] and [redacted] had previously worked together when both were NSA employees.) [redacted]

[redacted]

[redacted] doubted that any documentation existed that rationalized the decision to break up the branch; it was too long ago.

(S//NF) [redacted] was not on the panel that made the selection,

[redacted]

(S//NF) [redacted] so no new billet was created. [redacted]

[redacted]

(S//NF) Allegation of Preferential Treatment for a Friend/Contractor. [redacted]

first heard of [redacted] when his resume was sent over by [redacted] he had never met him beforehand. [redacted] never did any home renovations or work on [redacted] home, let alone with [redacted] relationship outside of work with [redacted] has since been limited to two social engagements: [redacted] attended [redacted] wedding and [redacted] went to a Christmas party that [redacted] hosted.

(S//NF) [redacted]

[redacted]

(S//NF) Like the other staffers and contract personnel, [redacted]

[redacted]

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(b) (6)

(b) (3) -P.L., 86-36

(b) (3) -P.L., 86-36  
(b) (6)

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(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L., 86-36  
(b) (6)

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L., 86-36

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(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L., 86-36

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(b) (3) -P.L. 86-36

rated [redacted] performance as "excellent" based on reports [redacted] and his current manager.

(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) [redacted] decides who will go on a TDY. [redacted] would not make the decision, though he might question why the [redacted] made a particular selection. Once the Branch Chief explained his rationale, [redacted] might override the decision if he thought it made more sense to select someone else. [redacted] denied giving preferential treatment to anyone.

~~(S//NF) Allegation of the Use of Contractors for Inherently Governmental Functions.~~

[redacted]

[redacted] At no point do contractors make decisions on behalf of the government. [redacted]

[redacted]

(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36

(S//NF) [redacted] intervened when he learned that some staffers were sitting idle [redacted] telling contractors what to do and not working themselves. [redacted] corrected the problem, as government personnel are not permitted to direct the work of contractors.

(b) (3) -P.L. 86-36  
(b) (6)

(C//NF) [redacted] was interviewed on 30 April 2014 and provided the following sworn testimony:

~~(S//NF) Allegation of Preferential Treatment for a Relative. When [redacted]~~

[redacted]

(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

(S//NF) The new [redacted] position was subsequently advertised and competed. [redacted]

[redacted]

(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) [redacted] was not on the hiring panel for [redacted] position. [redacted] told [redacted] that he could not be involved in the process because [redacted] was his cousin. Prior to this conversation, [redacted] had been unaware that they were related. [redacted] had known [redacted] before he met [redacted] status as [redacted] cousin "absolutely did not" help him get the position. [redacted] also did not influence the selection of [redacted]

(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36

(S//NF) *Allegation of Preferential Treatment for a Friend/Contractor.* [redacted]

[redacted]

(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) [redacted] sent resumes for [redacted] review and selection.<sup>2</sup> [redacted] did not recall anyone by the name of [redacted]

(b) (3) -P.L. 86-36

(S//NF) [redacted] consulted with his [redacted] on most decisions:

[redacted]

[redacted] seldom got involved, unless there were problems. [redacted]

[redacted]

(S//NF)

[redacted]

[redacted] while management

(b) (1)  
(b) (3) -50 USC 3024 (1)  
(b) (3) -P.L. 86-36

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

<sup>2</sup> (U//FOUO) [redacted]

struggled to make sure the work was spread equitably. In fact, they used to assign work [redacted] but abolished that practice so that everyone would have an opportunity [redacted] [redacted] did not favor anyone [redacted] [redacted] On the contrary, he made sure everyone had equal opportunities to do work [redacted] When it came to selecting a contractor or staffer [redacted] there were no issues. The selection was based first upon availability and then perhaps experience, capability, and familiarity [redacted]

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

~~(S//NF)~~ Allegation of the Use of Contractors for Inherently Governmental Functions

[redacted] was unaware of any problems with contractors taking direction from government leads. However, he knew from experience [redacted] that the staffers [redacted] treated the people who worked with them "roughly." In fact, he had to counsel some of the staffers about their behavior after he received complaints [redacted] [redacted] so he would not be surprised if someone gave an instruction [redacted] [redacted] that was not well received or well given. These personality conflicts were hard to manage.

~~(S//NF)~~ [redacted] never saw any signs that [redacted] favored certain employees or contractors. [redacted] and [redacted] sat five feet from one another and talked about virtually every decision. [redacted] was extremely fair in the way he viewed the division and interacted with people but he was also firm when he needed to be.

(b) (3) -P.L. 86-36  
(b) (6)

~~(C//NF)~~ [redacted] [redacted] consented to a voluntary interview and provided the following sworn testimony on 5 September 2014:

~~(C//NF)~~ Allegation of Preferential Treatment for a Friend/Contractor

[redacted] met [redacted] for the first time 3.5 years ago when [redacted] interviewed him for the position.<sup>3</sup> He had never met [redacted] prior to his employment on the [redacted] contract. Since then, they have developed a social relationship. [redacted] estimates he sees [redacted] outside of work maybe once a year. For instance, [redacted] came to [redacted] wedding. [redacted] denied having a personal relationship with [redacted] [redacted] knew [redacted] briefly when he first came on the contract, but had no social contact with him. [redacted] never worked on [redacted] home and never worked on [redacted] home.

(b) (3) -P.L. 86-36

~~(S//NF)~~ [redacted]  
[redacted]

~~(S//NF)~~ [redacted]  
[redacted]

(b) (3) -P.L. 86-36  
(b) (6)

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(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

<sup>3</sup> (U//FOUO) See footnote 3 above.

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36  
(b) (6)



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[Redacted]

(b) (1)  
(b) (3) -50 USC 3024 (f)  
(b) (3) -P.L. 86-36

~~(S//NF)~~ *Allegation of the Use of Contractors for Inherently Governmental Functions.* [Redacted]

[Redacted]

~~(S//NF)~~ [Redacted]

[Redacted]

~~(C//NF)~~ [Redacted]

[Redacted] was interviewed on 28 April 2014 and provided the following sworn testimony:

~~(S//NF)~~ *Allegation of Preferential Treatment for a Friend/Contractor.* [Redacted]

[Redacted]

(b) (1)  
(b) (3) -50 USC 3024 (f)  
(b) (3) -P.L. 86-36

(b) (3) -P.L. 86-36

~~(S//NF)~~ [Redacted] hears that [Redacted] does "fine" [Redacted]

[Redacted]

[Redacted] She assessed that it was a personality conflict.

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~~(S//NF)~~ Allegation of the Use of Contractors for Inherently Governmental Functions.

Nevertheless, contractors do not commit government resources or provide direction and control of staffers. Contractors only oversee other contractors.

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(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

[Redacted]

~~(S//NF)~~ [Redacted]

[Redacted]

It seemed like some people were busy all the time, while others were idle.

~~(C//NF)~~ [Redacted] contract from 2006-2009, was interviewed on 30 April 2014 and provided the following sworn testimony:

~~(S//NF)~~ [Redacted]

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

~~(S//NF)~~ Allegation of Preferential Treatment for a Friend/Contractor. As a

[Redacted] worked with [Redacted] and [Redacted]. He does not specifically recall the [Redacted] contract, but acknowledges he may have reviewed the statement of work. [Redacted]

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

[Redacted]

(b) (3) -P.L. 86-36  
(b) (6)

~~(S//NF)~~ [Redacted] was not aware of a personal relationship between [Redacted] and any of the contractors. He did not recollect anyone by the name of [Redacted]. [Redacted] may have involved his [Redacted] in the review of the candidates' resumes. Ultimately, however, it was [Redacted] responsibility to make the final decision.

(b) (3) -P.L. 86-36

~~(S//NF)~~ Allegation of the Use of Contractors for Inherently Governmental Functions.

[redacted]  
[redacted] managers could be either staffers or contractors. The COTR [redacted] Nevertheless, the COTR was responsible for approving the invoices, so he or she needed to know how many hours a day a contractor worked.

(b) (3) - P.L. 86-36  
(b) (6)

~~(S//NF)~~ [redacted] never observed [redacted] demonstrating preferential treatment. [redacted]  
[redacted] He always got the impression that [redacted] made sure his staff did a good job and were held accountable.

(b) (1)  
(b) (3) - 50 USC 3024 (1)  
(b) (3) - P.L. 86-36

~~(C//NF)~~ [redacted] contract, was interviewed on 30 April 2014 and provided the following sworn testimony:

~~(S//NF)~~ [redacted]  
[redacted]

(b) (3) - P.L. 86-36  
(b) (6)

~~(S//NF)~~ Allegation of Preferential Treatment for a Friend/Contractor. [redacted] was not aware of any personal relationships between [redacted] and any of the contractors on the [redacted] contract. He did not know of [redacted] ever influencing the selection of any of the contractors who came on board. [redacted] thought [redacted] role vis-à-vis the contract. [redacted] had no concerns about [redacted] conduct relative to the [redacted] contract.

(b) (1)  
(b) (3) - 50 USC 3024 (1)  
(b) (3) - P.L. 86-36

~~(S//NF)~~ Allegation of the Use of Contractors for Inherently Governmental Functions. [redacted]  
[redacted] He did not know whether contractors were team leads. However, he did know that contractors cannot make decisions on behalf of the government. [redacted]  
[redacted]

V. (U) Analysis

~~(S//NF)~~ Allegation of Preferential Treatment for a Relative. 5 CFR, § 2635.101 (b8) states that "employees shall act impartially and not give preferential treatment to any private organization or individual." NSA/CSS PMM, Chapter 366, Section 1-3, (G) states

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(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36

that employees are expected to "act impartially and not give preferential treatment to any private organization or individual." The OIG did not find a preponderance of evidence that [redacted] gave preferential treatment to his cousin, [redacted].

(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) Although personnel records pertaining to [redacted] selection seven years ago could not be located, the former [redacted] testified that [redacted] was selected by a hiring panel in which [redacted] did not participate. This testimony is consistent with [redacted].

(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) *Allegation of Preferential Treatment for a Friend/Contractor.* 5 CFR, § 2635.101 (b8) states that "employees shall act impartially and not give preferential treatment to any private organization or individual." FAR 3.101 states that "government business shall be conducted.. with complete impartiality and with preferential treatment for none." NSA/CSS PMM, Chapter 366, Section 1-3, (G) states that employees are expected to "act impartially and not give preferential treatment to any private organization or individual." The OIG did not find a preponderance of evidence that [redacted] gave preferential treatment to his friend, [redacted] by influencing his selection for the [redacted] contract.

(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) [redacted] testified and [redacted] corroborated that they had never met each other prior to [redacted] sending his resume to fill a position on the contract. Therefore, [redacted] could not have influenced the selection of his "friend" since they were unknown to one another. Furthermore, suggestions that [redacted] favors [redacted] because of a personal relationship are weakened considerably by the fact that their outside relationship has consisted of one or two encounters per year.

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(S//NF) Additionally, the complainant implied that [redacted] created a fictitious requirement [redacted] so that he could bring [redacted] on contract. [redacted]

(b) (1)  
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(b) (1)  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36  
(b) (6)

(S//NF) *Allegation of the Use of Contractors for Inherently Governmental Functions.* FAR 7.503 states that "contracts shall not be used for the performance of inherently governmental function." Examples of functions considered to be inherently governmental include the direction and control of Federal employees and determining whether supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency). The OIG did not find a preponderance of the evidence that [redacted] used the [redacted] contract for the performance of inherently governmental functions.

(b) (3) -P.L. 86-36  
(b) (6)

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(b) (1)  
(b) (3)-50 USC 3024(i)  
(b) (3)-P.L. 86-36  
(b) (6)

(S//NF) [redacted]  
[redacted]

(S//NF) [redacted] stated that contractors do not commit government resources. In [redacted] [redacted] stated that contractors cannot make decisions on behalf of the government. [redacted] This testimony was validated by contractor, [redacted] [redacted]

(b) (3)-P.L. 86-36

**VI. (U) Conclusion(s)**

(C//NF) Unsubstantiated. The OIG did not find a preponderance of evidence that [redacted]

1. gave preferential treatment to his cousin, [redacted]
2. demonstrated preferential treatment for a friend [redacted] by influencing his selection for a contract;
3. used the [redacted] contract for the performance of inherently governmental functions.

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(b) (6)

(b) (1)  
(b) (3)-50 USC 3024(i)  
(b) (3)-P.L. 86-36

**VII. (U) Recommendation(s)**

(S//NF) (U//FOUO) Recommend that this case be closed. Further recommend that [redacted]  
[redacted]

**VIII. (U) OGC Concurrence (as appropriate)**  
(U//FOUO) N/A