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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

MEMORANDUM

June 25, 2013

To: Democratic Members of the Oversight and Government Reform Committee

Fr: Democratic Staff

Re: Hearing on "The IRS Contracts with Strong Castle, Inc."

On Wednesday, June 26, 2013, at 9:00 a.m., in room 2154 of the Rayburn House Office Building, the Committee will hold a hearing to examine allegations against Strong Castle, Inc., a company that was awarded approximately \$51 million in obligations under two information technology (IT) contracts with the Internal Revenue Service (IRS).

EXECUTIVE SUMMARY

Taking Improper Advantage of HUBZone Program

The first allegation investigated by the Committee is that the company's owner, a local businessman from Northern Virginia named Braulio Castillo, took improper advantage of the Historically Underutilized Business Zone (HUBZone) program while setting up and operating his companies, Strong Castle and Signet Computers, in Washington, D.C.

The purpose of the HUBZone program is "to provide federal contracting assistance for qualified SBCs [small business concerns] located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas." As part of this program, which is overseen by the Small Business Administration (SBA), companies designated as HUBZone contractors may receive preferred status when bidding on federal contracts.

In order to qualify for the HUBZone program, Mr. Castillo opened one small office in a HUBZone near the Chinatown neighborhood of Washington, D.C. He then worked with the Head Football Coach at Catholic University, his former college roommate, to hire college students living in a different HUBZone near Catholic University.

On December 14, 2012, Mr. Castillo's former employer and current competitor, Government Acquisitions Inc. (GAI), filed a protest with the Government Accountability Office

(GAO) accusing Mr. Castillo of “manipulating the facts to gain the preferred status” of a HUBZone contractor. Although GAO concluded that only SBA could decertify a company, GAI had written separately to SBA on January 22, 2013, accusing Mr. Castillo of engaging in a “shell game” with multiple businesses and employees to obtain HUBZone status.

SBA conducted its own review and on May 23, 2013, decertified Mr. Castillo’s company as a HUBZone contractor. SBA determined that Mr. Castillo’s company submitted employee records that “were false and inaccurate” and concluded that the company “does not have the adequate internal controls to independently verify employee records.”

Mr. Castillo participated in a nine-hour interview with Committee staff and will testify at the hearing. He defended his actions and denied any wrongdoing. Committee staff also interviewed his wife, who served previously as the company’s Chief Operating Officer, and six of Mr. Castillo’s student employees.

Failing to Disclose Relationship Between Mr. Castillo and Mr. Roseman

Another major allegation at issue in this investigation is that Mr. Castillo had a personal relationship with IRS employee Gregory Roseman that Mr. Roseman did not disclose to the contracting officers who awarded contracts to Strong Castle, to his direct supervisor at the IRS, or to the IRS Office of General Legal Services.

Mr. Roseman was a voting member of the Contract Review Board for two IRS contracts awarded to Mr. Castillo’s company. A Contract Review Board is charged with assessing whether acquisitions are competed consistently with procurement laws, rules, and regulations. The Contract Review Board in both cases concurred with the contracting officers’ decisions to award contracts to Strong Castle.

No IRS officials interviewed by the Committee reported any knowledge of Mr. Castillo’s relationship with Mr. Roseman. No contracting officers or other IRS procurement officials interviewed by the Committee reported any inappropriate influence by Mr. Roseman on the contracting process. Nevertheless, the evidence obtained by the Committee indicates at least an appearance of impropriety because Mr. Roseman did not disclose this relationship or recuse himself from the contracting process.

Mr. Castillo stated during his interview with Committee staff: “Greg Roseman and I are friends.” On May 15, 2013, the Treasury Inspector General for Tax Administration informed IRS officials that Mr. Castillo and Mr. Roseman had exchanged “personal text messages” that “contained inappropriate language and lacked professional decorum.” These text messages, sent from their personal cell phones, included work-related communications and obviously inappropriate personal communications, including the use of juvenile and offensive homosexual slurs from Mr. Roseman to Mr. Castillo and mocking references to another IRS employee.

Mr. Roseman has been reassigned pending completion of the Inspector General’s review and is no longer overseeing procurement matters. Mr. Roseman’s attorney has indicated that his

client will invoke his Fifth Amendment right not to testify at Wednesday's hearing because Chairman Issa suggested publicly that Mr. Roseman's actions involve potential criminal activity.

I. TAKING IMPROPER ADVANTAGE OF HUBZONE PROGRAM

In 2011, Braulio Castillo and his wife, Michelle Castillo, founded Strong Castle in order to obtain IT contracts from the federal government. Mr. Castillo sought to take advantage of securing HUBZone status in order to obtain federal contracts. He stated during his interview with Committee staff: "I knew that HUBZone was important, being from the industry, and so we went at it that way."¹

The purpose of the HUBZone program is "to provide federal contracting assistance for qualified SBCs [small business concerns] located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas."² SBA certification is required for HUBZone status, and SBA is solely responsible for reviewing applicant files and making determination decisions.³

To obtain HUBZone status, a company must maintain a principal office located in a HUBZone, and at least 35% of its employees must reside within a HUBZone.⁴ These requirements need not be fulfilled in the same HUBZone. An applicant must meet these criteria when it applies for HUBZone status, and it "must notify the SBA of any material changes that could affect its eligibility," such as no longer meeting the 35% residency requirement.⁵ Knowingly making false statements or failing to correct "continuing representations" may result in criminal penalties.⁶

To meet the requirement to have "a principal office located in a HUBZone," Mr. Castillo opened a small office near the Chinatown neighborhood of Washington, D.C. To meet the requirement that "at least 35% percent of its employees must reside within a HUBZone," Mr. Castillo hired college students living in a different HUBZone near Catholic University in Washington, D.C. Mr. Castillo told Committee staff that he consulted with SBA regarding hiring college students as HUBZone employees.⁷ Mr. Castillo worked with the Head Football

¹ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 121 (June 12, 2013).

² 13 C.F.R. § 126.100 (2013).

³ 13 C.F.R. § 126.301 (2013).

⁴ 13 C.F.R. § 126.200 (2013).

⁵ 13 C.F.R. § 126.304 (2013); 13 C.F.R. § 126.501 (2013).

⁶ 13 C.F.R. § 126.900(c) (2013).

⁷ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 121 (June 12, 2013).

Coach at Catholic University, his former college roommate, to identify and hire students for this purpose. In June 2012, SBA certified Strong Castle as a HUBZone company.⁸

In total, the IRS has obligated approximately \$51 million to Strong Castle to date, and the Committee's investigation has focused on two of those contracts.⁹ On December 7, 2012, Strong Castle was awarded a Laptop/Desktop Blanket Purchase Award (BPA) worth up to \$80 million over five years.¹⁰ On December 31, 2012, Strong Castle was awarded an IBM Software Relationship Offering BPA worth up to \$300 million in hardware orders.¹¹

A. Competitor Protested Strong Castle's HUBZone Status

On December 14, 2012, one of Strong Castle's competitors, GAI, filed a protest with GAO alleging that Mr. Castillo was operating multiple business entities, including the company he and his wife purchased in January 2012, Signet Computers, in order to manipulate the HUBZone process:

Signet has devised a series of physical addresses used to facilitate its proposed government procurement bid strategy. ... Signet is manipulating the facts to gain the preferred status.¹²

On March 25, 2013, GAO denied GAI's bid protest, finding that the IRS reasonably applied the "best value" to the government analysis. (See Section II.E., below.) With respect to GAI's argument that Strong Castle should not have been granted HUBZone status, GAO noted that only SBA has authority to revoke the company's HUBZone certification:

Under 15 U.S.C. § 637(b)(6) (2000), the SBA has conclusive authority to determine matters of size status for federal purposes and our Office will neither make nor review a

⁸ Letter from Marianna Pardo, Director, HUBZone Program, Small Business Administration, to Braulio Castillo, President and CEO, Signet Computers, Inc. (June 22, 2012).

⁹ USASpending.gov, *Prime Award Spending Data: Strong Castle, Inc.* (online at www.usaspending.gov/explore?tab=By+Prime+Awardee&frompage=contracts&contractorid=052821050&contractorname=STRONG+CASTLE%2C+INC&fiscal_year=all&typeofview=detailsummary) (accessed June 21, 2013). Although Chairman Issa has stated that Signet "was awarded upwards of \$500 million worth of federal contracts," the majority of these contracts are task orders to be filled over the course of several years. See Letter from Chairman Darrell Issa to Neal Wolin, Acting Secretary, Department of the Treasury (Feb. 20, 2013).

¹⁰ Internal Revenue Service, *Order for Supplies or Services between Signet Computers, Inc. and the United States of America*, Contract No. TIRNO-13-Z-00003 (Dec. 7, 2012).

¹¹ Internal Revenue Service, *Solicitation/Contract/Order for Commercial Items between Signet Computers, Inc. and the United States of America*, Order No. TIRNO-3-Z-00005 (Dec. 31, 2012).

¹² Letter from Counsel for Government Acquisitions, Inc. to Office of the General Counsel, Government Accountability Office (Dec. 17, 2012).

size status determination. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2012). Similarly, the SBA is the designated authority for determining whether a firm is an eligible HUBZone small business concern. 15 U.S.C. § 632(p)(5)(A); 13 C.F.R. §§ 126.300, 126.301 (2012); FAR § 19.1303. As a consequence, our Office will neither make nor review HUBZone status determinations.¹³

On January 22, 2013, GAI wrote directly to SBA in order to challenge the HUBZone status of Mr. Castillo's companies:

Signet Computers, Inc. ("Signet") and its various other corporate entities have developed a "shell game" of alleged physical locations, entity identifications, SAM registrations [System for Award Management] and SBA certification identities. The overriding question must focus on the reason why Signet feels it was necessary to create such an elaborate scheme of locations and registration and bidding identities to compete for government work?¹⁴

GAI alleged further:

Strong Castle LLC and Signet Computers, Inc. are clearly, at a minimum, affiliates under the SBA definition and hence virtually the same company; only with a different name. Clearly, the management and owners of Signet Computers, Inc. and Strong Castle, LLC (they are the same) devised a scheme to get at least one company certified in an attempt to bid numerous solicitations that consider HUBZone Status as a heavily weighted evaluation factor. Simply, you can call an "apple" an "orange," but it is still an "apple."¹⁵

On January 31, 2013, SBA wrote to Mr. Castillo proposing to decertify his company from the HUBZone program because "it may not have been eligible at the time of certification into the program, the time any HUBZone preference was provided for a Federal award, and may not currently be eligible."¹⁶ Specifically:

- SBA stated that "the business concern's principal office may not be located in a HUBZone and may never have been located in a HUBZone."¹⁷
- SBA also reviewed information about Mr. Castillo's other companies, including Strong Castle Technologies, LLC, Strong Castle, Inc., Strong Castle LLC, and Signet

¹³ Government Accountability Office, *In the Matter of Government Acquisitions, Inc.; PCi Tec, Inc.*, File: B-407877.2; B-407877.3; B-407877.4 (Mar. 25, 2013).

¹⁴ Letter from Counsel for Government Acquisitions, Inc. to Laura Mann Eyester, Office of General Counsel, and Mariana Pardo, Director, HUBZone Program, Small Business Administration (Jan. 22, 2013).

¹⁵ *Id.*

¹⁶ Letter from Leo Sanchez, Deputy Director, HUBZone Program, Small Business Administration, to Braulio Castillo, President and CEO, Signet Computers, Inc. (Jan. 31, 2013).

¹⁷ *Id.*

Computers, and stated that “it appears that all of the companies are related and may be acting as one.”¹⁸

- SBA expressed concern that Mr. Castillo may be sharing employees among these affiliates, concluding that “SBA believes that Signet may not meet the 35% HUBZone residency requirement.”¹⁹

SBA requested additional documents and information from Mr. Castillo, including an explanation of the relationships between all of Mr. Castillo’s companies and payroll records showing all employees and the hours they worked during the periods at issue.²⁰

B. SBA Revoked the Company’s HUBZone Status

On May 23, 2013, SBA decertified Strong Castle’s HUBZone status, concluding that the company submitted inaccurate records, improperly designated employees as contractors, and lacked sufficient internal controls.

The Director of SBA’s HUBZone program personally reviewed the matter and sent a decertification letter to Mr. Castillo finding that Strong Castle “did not provide SBA with reliable and accurate payroll records” and that “the information and documentation provided by SCI to SBA has not been accurate.”²¹

According to SBA, Strong Castle submitted inaccurate payroll information for two student employees in December 2012. SBA highlighted one instance in which the hours of one student conflicted with his exam schedule. SBA also noted that Strong Castle did not discover and correct these inaccuracies independently:

SCI admitted that the records provided were false and inaccurate. SCI confirmed the one instance identified by SBA, and identified another instance of the firm’s payroll records showing an employee working hours on a day that the employee did not work. ... The corrections were only made after being confronted with the conflicting evidence presented by SBA.²²

The SBA official also concluded that Strong Castle did not properly monitor and validate employee work hours:

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Letter from Mariana Pardo, Director, HUBZone Program, to Braulio Castillo, President and CEO, Signet Computers, Inc. (May 23, 2013).

²² *Id.*

SCI's response to SBA's inquiry demonstrates that SCI does not have the adequate internal controls to independently verify employee records in order to provide SBA with an accurate payroll. Therefore, I cannot reasonably rely on the payroll records submitted by SCI in making a determination of the firm's eligibility for the HUB Zone program.²³

The SBA official explained further:

The record demonstrates that SCI did not and does not appear to have adequate internal controls to verify the accuracy of its records. Specifically, I note that the signed declarations submitted on behalf of 2 employees (whose erroneous entries were included in their December payroll documents) indicate that SCI's employees' work hours were not properly monitored and/or validated by the firm, its owners, and its managers. It indicates that SCI employees can record time worked as they please or as SCI requests adjustments from the employees. This facetious attitude with regard to the accuracy of records may be accepted by SCI and its management; however, this is not an acceptable method to verify and accurately report information necessary for the SBA to make a reasonable conclusion based on the records in question.²⁴

SBA also found that Strong Castle erroneously characterized individuals as "contractors" rather than "employees" in order to maintain its 35% eligibility requirement for the HUBZone program:

In this case, SCI is attempting to claim that one of its key employees and its program manager for a major Government contract is not an employee at all. The description of the work performed by [EMPLOYEE] describes an individual that is selected by SCI, supervised by SCI, can be dismissed by SCI, and almost exclusively performs tasks that would regularly be performed by employees of the firm.²⁵

SBA explained further:

In this case, it appears that SCI is telling the Government two different stories. To the IRS [EMPLOYEE] is a valued and key member of "Signet's Management Team" and its proposed Program Manager, and to SBA she is merely an independent contractor. In SBA's view, a firm's "Management Team" and its Program Manager are not roles that are normally subcontracted out to third parties.²⁶

Based on this review, the SBA official found: "I cannot conclude that the greatest number of SCI's employees perform their work at an office located in a HUBZone. Therefore, SCI has failed to demonstrate that its principal office is located in a HUBZone."²⁷ SBA

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

concluded that “without an accurate accounting of how many hours and where an employee works SBA cannot make a reasonable conclusion about a firm’s eligibility.”²⁸ For these reasons, SBA notified Mr. Castillo that his company had been “decertified and removed from the Small Business Administration’s (SBA) list of certified HUBZone firms.”²⁹

C. Committee Investigation Supports SBA’s Decertification Decision

Evidence obtained during the Committee’s investigation confirmed SBA’s findings. Committee staff interviewed six Catholic University students who worked for Mr. Castillo and reviewed extensive documentation, including their time sheets, examination schedules, and social media profiles. Committee staff also interviewed Mr. Castillo and his wife, who served previously as the Chief Operating Officer of Strong Castle.

During her interview with Committee staff, Ms. Castillo confirmed inaccuracies in the company’s payroll records:

Q: So why didn’t you look for a discrepancy with [EMPLOYEE]?

A: I don’t know.

Q: Wouldn’t it have been wise to look for a discrepancy with [EMPLOYEE]?

A: Yes. I don’t know the answer.

Q: Do you think a discrepancy seems to exist regarding [EMPLOYEE]?

A: Yes.³⁰

Despite identifying some errors, Ms. Castillo stated that she did not do a more extensive review of additional company records:

Q: And you discovered errors?

A: Yes.

Q: Multiple errors?

A: Two transposed numbers from two different people.

Q: In the month of December alone. Did you check for the month of November?

²⁸ *Id.*

²⁹ *Id.*

³⁰ House Committee on Oversight and Government Reform, Transcribed Interview of Michelle Castillo, at 200 (June 3, 2013).

A: Did not.

Q: Did you check for the month of October?

A: Did not.

Q: Did you check for the month of September?

A: Did not.

Q: Did you check for the month of August?

A: No.

Q: Did you check for the month of July?

A: We only checked for the month of December.

Q: Only checked for the month of December. So how do you know there weren't other errors for the previous 6 months?

A: I don't.³¹

During her interview, Ms. Castillo stated that she discovered that one Catholic University student did not in fact reside within the HUBZone. Ms. Castillo conceded that if the employee had worked 40 hours that month—and therefore was required to be counted as an employee living outside the HUBZone—Strong Castle would not have met its 35% HUBZone employee residency requirement:

Q: Do you agree that if [EMPLOYEE] was—had worked 40 hours in the month of June 2012, Signet would not have complied with the 35 percent HUBZone residency requirement?

A: I agree.³²

When the Committee reviewed this student's timesheet, it indicated that the student worked 40 hours, but there was also a notation directing the student to "change to 39 and initial." Although the daily hour totals were revised to reflect 39 hours, the weekly total remained unchanged at 40 hours. Ms. Castillo told Committee staff that she checked the student's time sheet because she was concerned that the student was "close to the line" of dropping below the 35% HUBZone employee threshold.³³

³¹ House Committee on Oversight and Government Reform, Transcribed Interview of Michelle Castillo, at 186-187 (June 3, 2013).

³² *Id.* at 147.

³³ *Id.* at 141-142.

During her interview with Committee staff, the student stated that Ms. Castillo informed her that she could no longer work at Strong Castle because it would prevent the company from pursuing HUBZone opportunities.³⁴ According to the student, it would be fair to characterize her departure from Strong Castle as a termination.³⁵ Ms. Castillo disagreed, stating: “I’m trying to remember if I asked her to resign. I don’t remember the exact wording, but I probably did ask her or give her the option or asked her to resign.”³⁶ According to Ms. Castillo, Strong Castle paid the student for two weeks of work, but did not require the student to work for that entire period.³⁷

D. Inaccurate Information Provided to Veterans Affairs

Evidence obtained by the Committee indicates that Mr. Castillo also may have provided inaccurate information to the Department of Veterans Affairs (VA) in support of his Service Disabled Veteran Owned Small Business (SDVOSB) application, although it is unclear whether this inaccuracy was material.

The purpose of the SDVOSB program is “to provide procuring agencies with the authority to set acquisitions aside for exclusive competition among service-disabled veteran-owned small business concerns.”³⁸ In order to become certified as an SDVSOB, a company must be owned by a veteran with a service-connected disability.³⁹

On May 26, 2011, Mr. Castillo submitted a letter to VA from Dr. L. Sam Wilson, Jr. explaining the circumstances of his service-connected disability:

Braulio related that when at the West Point Preparatory School in 1984 for which he had been admitted as a high school quarterback for training to come into the army and meeting all the admission requirements, injured his foot at practice and after a brief period of rest, he was subsequently treated with shoe inserts and then returning to play ball.⁴⁰

³⁴ House Committee on Oversight and Government Reform Transcribed Interview of REDACTED STUDENT NAME, at 17 (April 26, 2013).

³⁵ *Id.* at 31.

³⁶ House Committee on Oversight and Government Reform, Transcribed Interview of Michelle Castillo, at 99 (June 3, 2013).

³⁷ *Id.* at 103-104.

³⁸ Small Business Administration, *Service-Disabled Veteran-Owned Businesses* (online at www.sba.gov/content/service-disabled-veteran-owned-small-business-concerns-sdvosbc) (accessed June 21, 2013).

³⁹ *Id.*

⁴⁰ Letter from Dr. L. Sam Wilson, Jr. to Whom it May Concern: Veterans Administration Disability Application re: Braulio Castillo (May 26, 2011).

Pursuant to federal statutes and regulations, attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, and the United States Naval Academy is considered active duty training for any period during which individuals become disabled from injuries incurred in the line of duty.⁴¹

The Veterans Entrepreneurship and Small Business Development Act of 1999 requires no minimum disability rating to qualify as a service-disabled veteran for federal contracting purposes. GSA advises that “the important factor is making sure that you have established a disability rating from your branch of the service—not the degree of the disability.”⁴² On December 21, 2011, VA concluded that Mr. Castillo had a service-related disability.⁴³ On August 3, 2012, VA confirmed that Mr. Castillo’s company qualified as a service-disabled veteran-owned small business.⁴⁴

During his interview with Committee staff, Mr. Castillo stated that the information regarding the cause of his disability included in the letter from Dr. Wilson was inaccurate.⁴⁵ Instead of becoming injured while playing football, he stated:

We were on an orienteering exercise in a run through the woods and I broke my foot. ... I remember stopping, I remember being taken to Patterson Health, being X rayed and then being casted and then what the treatment was.⁴⁶

Although it is unclear whether this inaccuracy would have impacted Mr. Castillo’s qualification as a service-disabled veteran, he informed Committee staff that he realized this information was inaccurate in 2011, but took no steps to correct the record with VA.⁴⁷ It remains unclear whether Mr. Castillo has contacted VA about this matter.

II. PERSONAL RELATIONSHIP BETWEEN VENDOR AND IRS EMPLOYEE

Evidence obtained by the Committee indicates that Mr. Castillo has a personal relationship with Gregory Roseman, who served as the Deputy Director of Enterprise Networks and Tier Systems Support at the IRS. Although no contracting officers or other IRS officials

⁴¹ See 38 U.S.C. § 101(24) and 38 CFR § 3.6(b)(5).

⁴² General Services Administration, *SDVO Small Businesses: Getting Started* (online at www.gsa.gov/portal/content/104858) (accessed on June 21, 2013).

⁴³ Department of Veterans Affairs, Roanoke Regional Office, *Rating Decision: Braulio Castillo* (Dec. 21, 2011).

⁴⁴ Letter from Andrea M. Gardner-Ince, Director, Center for Veterans Enterprise, to Braulio Castillo, President and CEO, Signet Computers, Inc. (Aug. 3, 2012).

⁴⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 317 (June 12, 2013).

⁴⁶ *Id.* at 103-104, 110.

⁴⁷ *Id.* at 317-318.

interviewed by Committee staff reported any inappropriate or undue influence by Mr. Roseman to award contracts to Strong Castle, the evidence before the Committee indicates at least an appearance of impropriety because Mr. Roseman failed to disclose this relationship to his supervisors or recuse himself from the contracting process.

A. Procurement Officials Required to Disclose Personal Relationships

Federal laws, regulations, and ethical guidelines require federal procurement officials to disclose personal relationships, consult with management, or recuse themselves before engaging in the federal contracting process.

Pursuant to the Office of Federal Procurement Policy Act of 1974, the Federal Acquisition Regulation (FAR) states that “government business shall be conducted ... with complete impartiality and with preferential treatment for none.”⁴⁸ The FAR requires procurement officials to “avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.”⁴⁹ The FAR applies to all participants in government acquisition, including “the contractors who provide the products and services.”⁵⁰ The Department of the Treasury Acquisition Regulation (DTAR) implements the FAR at the Treasury Department and covers the IRS.⁵¹

In addition, the Office of Government Ethics (OGE), established by the Ethics in Government Act of 1978, provides overall direction, oversight, and accountability of Executive Branch policies designed to prevent and resolve conflicts of interest.⁵² OGE has promulgated standards of ethical conduct to help employees better identify and avoid conflicts of interest in procurement actions.⁵³ According to OGE, a personal relationship may create a perceived conflict of interest if “a reasonable person with knowledge of the relevant facts” would question an employee’s impartiality in the matter.⁵⁴ OGE’s Ethics and Procurement Integrity guidance explains further:

Even though you may not have a financial interest that can be affected by a procurement activity or contract, circumstances might arise that could call your impartiality into question. Some examples of when your impartiality could be questioned include the following:

⁴⁸ 48 C.F.R. § 3.101-1(2013).

⁴⁹ *Id.*

⁵⁰ 48 C.F.R. § 1.102(c) (2003).

⁵¹ 48 C.F.R. § 1001.101 (2011).

⁵² Office of Government Ethics, *Mission and Responsibilities* (online at www.oge.gov/About/Mission-and-Responsibilities/Mission---Responsibilities/).

⁵³ 5 C.F.R. § 2635.502 (1997).

⁵⁴ *Id.*

Your duties require you to work on a procurement involving your former employer or clients, your spouse's employer or clients, close relatives, or others with whom you have some kind of business relationship.

You are assigned to a contract involving a person you are dating.

You are required to evaluate bids, one of which was submitted by a friend.

If you encounter any situation where you think your impartiality would reasonably be questioned, you should stop working on that matter, and contact your supervisor and agency ethics official for further advice.⁵⁵

The IRS Internal Revenue Manual, which governs IRS employee conduct, also states that an employee should not participate in a matter that will have a direct and predictable effect on the financial interests of a person with whom the employee has a relationship when "a reasonable person would question the employee's impartiality in participating in the matter."⁵⁶ The Manual explains that an employee's supervisor may authorize the employee "to participate despite the appearance of a lack of impartiality if he or she determines, in light of all relevant circumstances, that the Government's interest in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations."⁵⁷ Supervisors are directed to consult with the Associate Chief Counsel in the Office of General Legal Services (GLS) before issuing an authorization.

B. Personal Relationship Between Mr. Castillo and Mr. Roseman

During his interview with Committee staff, Mr. Castillo stated: "Greg Roseman and I are friends."⁵⁸ He explained that he met Mr. Roseman ten years ago when Mr. Castillo worked for his former company, GAI, and their friendship developed from that working relationship. According to Mr. Castillo, his previous company "was the largest small business that called on the IRS during that time period, and Greg was either the section chief on those buys or the branch chief."⁵⁹

⁵⁵ Office of Government Ethics, *Ethics & Procurement Integrity: What You Need to Know as a Federal Employee Involved in the Procurement and Acquisition Process* (2007) (online at www.oge.gov/Education/Education-Resources-for-Federal-Employees/Ethics---Procurement-Integrity--What-You-Need-to-Know-as-a-Federal-Employee-Involved-in-the-Procurement-and-Acquisition-Process/).

⁵⁶ Internal Revenue Manual § 39.1.2.3.1.5, Appearances of a Lack of Impartiality Pursuant to 5 C.F.R. part 2635, subpart E (2004).

⁵⁷ *Id.*

⁵⁸ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 68 (June 12, 2013).

⁵⁹ *Id.* at 69.

On several occasions in 2012, Mr. Castillo requested, and Mr. Roseman provided, assistance in getting Strong Castle onto Schedule 70 of the Federal Supply Schedule operated by the General Services Administration (GSA). The Federal Supply Schedule allows agencies to obtain indefinite delivery, indefinite quantity, long-term contracts. Schedule 70 is one of many GSA Schedules under which a vendor may apply for a contract. A company may join the GSA Schedule only after GSA determines that the vendor's pricing is fair and reasonable and that the vendor is in compliance with all applicable laws and regulations.⁶⁰

Mr. Roseman left the IRS in January 2009 to serve as the Director of Schedule 70 Division 2 for GSA before returning to the IRS in September 2010. As Mr. Castillo noted in his transcribed interview, "When Greg left the IRS, he ran IT Schedule 70s at GSA, so I knew that he was very proficient on GSA schedule."⁶¹ Once Mr. Castillo founded Strong Castle, he consulted with Mr. Roseman, noting that his experience was "helpful to the extent that, you know, I could reach out to him, say, what is the process."⁶²

When Mr. Roseman worked as a GSA Schedule 70 Director, he supervised an employee who was a Supervisory Branch Chief and Contract Specialist at GSA.⁶³ This employee told Committee staff that she considers Mr. Roseman to be a good friend. In February 2012, Mr. Roseman spoke to this employee and requested that she expedite the review of Strong Castle's GSA offer.⁶⁴ According to this employee, Mr. Roseman's request was appropriate, and agency officials regularly ask for companies to receive an expedited review by GSA.⁶⁵

On May 15, 2013, the Treasury Inspector General for Tax Administration reported that Mr. Castillo and Mr. Roseman had exchanged "personal text messages" that "contained inappropriate language and lacked professional decorum."⁶⁶ Based on documents obtained by

⁶⁰ General Services Administration, *What We Offer* (online at www.gsa.gov/portal/content/188085) (accessed June 21, 2013).

⁶¹ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 29-30 (June 12, 2013).

⁶² *Id.* at 30.

⁶³ Briefing by Supervisory Branch Chief and Contract Specialist, General Services Administration, to House Government Reform Committee Staff (Apr. 18, 2013).

⁶⁴ E-mail from Gregory Roseman, Deputy Director, IT Procurement, Internal Revenue Service, to Braulio Castillo, President and CEO, Signet Computers, Inc. (Feb. 16, 2012).

⁶⁵ Briefing by Supervisory Branch Chief and Contract Specialist, General Services Administration, to House Government Reform Committee Staff (Apr. 18, 2013).

⁶⁶ E-mail from Special Counsel, Internal Revenue Service, to House Committee on Oversight and Government Reform Staff (June 3, 2013).

the Committee, Mr. Castillo and Mr. Roseman appear to have exchanged more than 300 text messages on their personal cell phones over the course of three years.⁶⁷

Mr. Castillo and Mr. Roseman engaged in numerous communications about their work. For example, on January 3, 2012, Mr. Castillo sent a text message to Mr. Roseman asking for a “good co at GSA for my schedule 70.”⁶⁸ Mr. Roseman recommended a contracting officer to Mr. Castillo.⁶⁹ In addition, between September 29 and October 1, 2012, Mr. Castillo and Mr. Roseman had the following exchange via text messages:

Mr. Castillo: Did you get the order from DLT/Carahsoft yet?

Mr. Castillo: If you require anything for year end, we are working all weekend.

Mr. Castillo: If you require anything for year end, we are working all weekend. We are open today, September 30th, if you need us.

Mr. Castillo: Will you please call me? A couple of days ago you texted me that you were “working it.” Did anything come of it?

Mr. Roseman: I will call u tomorrow. The last three days of the fy were tough. This was the roughest year I’ve experienced in 30 years of procurement. A number of people said the same. Plus throw in [REDACTED] issues. Took a mental health day today. Will call in the morning.

Mr. Castillo: I will pray for you and your family.

Mr. Roseman: I will call in the morning. Is everything ok?

Mr. Castillo: Nothing big; looking forward to talking to you.⁷⁰

Many of these text messages were of a personal nature, such as conveying holiday messages or discussing sports. On one occasion, Mr. Castillo recorded music on Mr. Roseman’s voicemail, apparently in jest.⁷¹ Mr. Castillo later sent Mr. Roseman a text message stating: “I

⁶⁷ See Braulio Castillo Text Messages Produced by Cooley LLP (May 13, 2013); *see also* Names Corresponding to Phone Numbers in Spreadsheet of Text Messages Produced by Cooley LLP for Braulio Castillo (May 15, 2013).

⁶⁸ Text message from Braulio Castillo, President and CEO, Signet Computers, Inc., to Gregory Roseman, Deputy Director, IT Procurement, Internal Revenue Service (Jan. 3, 2012).

⁶⁹ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 45 (June 12, 2013).

⁷⁰ See Braulio Castillo Text Messages Produced by Cooley LLP (May 13, 2013); *see also* Names Corresponding to Phone Numbers in Spreadsheet of Text Messages Produced by Cooley LLP for Braulio Castillo (May 15, 2013).

⁷¹ *Id.*

was listening to Blue Christmas by Elvis on the radio and I was trying to record it onto your voice mail, no biggie.”⁷² On another occasion, Mr. Castillo sent Mr. Roseman a text message announcing the birth of his son.⁷³

Many of the text messages were obviously inappropriate, including the use of offensive and juvenile homosexual slurs from Mr. Roseman to Mr. Castillo,⁷⁴ as well as mocking references to another IRS employee.⁷⁵

Although Mr. Castillo insisted that he is also friends with other IRS employees, those employees disputed his assertion. The Director of the Office of Information Technology Acquisitions stated that in his 19 years in IRS procurement, he has met Mr. Castillo on only six or seven occasions.⁷⁶ The contracting officer on the IBM SRO contract told Committee staff that he was not friends with any vendors that have business before the IRS.⁷⁷ The contracting officer on the Laptop/Desktop BPA contract told Committee staff, “I don’t have any friends that are contractors.”⁷⁸ That official’s Section Chief told Committee staff that, other than her brother, she is not friends with any contractors.⁷⁹ According to records provided by Mr. Castillo to the Committee, he exchanged only 32 text messages with all other IRS employees combined during this three-year period.⁸⁰ Mr. Castillo stated that he did not recall texting several IRS employees with whom he claims to be friends.⁸¹

⁷² *Id.*

⁷³ *Id.*

⁷⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 78 (June 12, 2013).

⁷⁵ See Braulio Castillo Text Messages Produced by Cooley LLP (May 13, 2013); see also Names Corresponding to Phone Numbers in Spreadsheet of Text Messages Produced by Cooley LLP for Braulio Castillo (May 15, 2013).

⁷⁶ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 20 (May 29, 2013).

⁷⁷ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 2, at 19 (May 23, 2013).

⁷⁸ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 1, at 105 (May 14, 2013).

⁷⁹ House Committee on Oversight and Government Reform, Transcribed Interview of Section Manager, Internal Revenue Service Office of Information Technology Acquisition, at 170 (May 15, 2013).

⁸⁰ See Braulio Castillo Text Messages Produced by Cooley LLP (May 13, 2013); see also Names Corresponding to Phone Numbers in Spreadsheet of Text Messages Produced by Cooley LLP for Braulio Castillo (May 15, 2013).

⁸¹ House Committee on Oversight and Government Reform, Transcribed Interview of Braulio Castillo, at 79-80 (June 12, 2013).

C. Failure to Disclose Relationship

It does not appear that Mr. Roseman disclosed his relationship with Mr. Castillo to the contracting officers who awarded contracts to Strong Castle, to his direct supervisor at the IRS, or to the IRS Office of General Legal Services. No IRS officials interviewed by the Committee reported any knowledge of Mr. Castillo's relationship with Mr. Roseman.

The contracting officer on the IBM SRO contract informed Committee staff that he had "no clue" whether Mr. Castillo and Mr. Roseman were friends.⁸² The contracting officer on the Laptop/Desktop BPA contract also stated that she did not know whether Mr. Roseman and Mr. Castillo were friends.⁸³

Mr. Roseman's direct supervisor, the Director of the Office of Information and Technology Acquisitions, stated during his interview with Committee staff: "Did I know that they had a personal relationship? The answer to that question is no."⁸⁴ He stated:

To my knowledge, Greg Roseman and Braulio Castillo have a contractor-client relationship no different from the contractor-client relationship that exists between myself and other vendors.⁸⁵

In addition, the IRS Office of General Legal Services confirmed for Committee staff that Mr. Roseman did not disclose this relationship or seek advice about potentially recusing himself from solicitations involving Mr. Castillo's companies.⁸⁶

D. Mr. Roseman's Role in the IRS Procurements

Mr. Roseman was a voting member of the Contract Review Board for two IRS contracts awarded to Mr. Castillo's company, the Laptop/Desktop BPA and the IBM Software Relationship Award BPA.⁸⁷ A Contract Review Board is charged with assessing whether an acquisition is being competed in a manner consistent with procurement laws, rules, and

⁸² House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 2, at 69 (May 23, 2013).

⁸³ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 1, at 193 (May 14, 2013).

⁸⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 87 (May 29, 2013).

⁸⁵ *Id.*

⁸⁶ E-mail from Special Counsel, Internal Revenue Service, to House Committee on Oversight and Government Reform Staff (June 21, 2013).

⁸⁷ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 252 (May 29, 2013).

regulations. Board meetings are held for IRS IT contracts with a value of more than ten million dollars.⁸⁸ During the review meeting, board members vote to confirm that the award decisions of lower-level contracting officers comply with procurement provisions. The Contract Review Board concurred with the contracting officers' decisions to award both contracts to Strong Castle.⁸⁹

In a letter to then-Acting Treasury Secretary Neal Wolin on February 20, 2013, Chairman Issa questioned whether the two IRS contract solicitations were "drafted to favor" Strong Castle.⁹⁰ Both contracting officers denied any favoritism and reported to Committee staff that they made the final decisions regarding how solicitations were structured.

For example, the contracting officer for the Laptop/Desktop BPA stated: "I'm the contracting officer and I'm the only one that can make the final decision."⁹¹ She explained further: "He doesn't have a role. He just—he's a person that you brief."⁹² When asked whether she had conversations with her supervisor about structuring the solicitation as HUBZone preferred, she replied: "None. I just write it in a letter, see what I'm writing, and she reviews it for any errors."⁹³

The contracting officer for the IBM SRO also explained that he made the final decision about how that solicitation was structured. He noted that Mr. Roseman and the Director of the Office of Information Technology Acquisitions said that the solicitation should be a HUBZone preferred solicitation.⁹⁴ The Director told Committee staff that although he did not direct the contracting officer to make a HUBZone preferred solicitation, he stated that "it would be good" to do so.⁹⁵ The contracting officer told Committee staff that he "concurred" with this approach, felt no pressure, and made "independent" decisions:

I can always say, I disagree with this, I want to be removed from it. I have not had to do that in my career, but you can—I have individuals remove themselves from

⁸⁸ *Id.* at 249-250.

⁸⁹ *Id.* at 257-256.

⁹⁰ Letter from Chairman Darrell Issa to Neal Wolin, Acting Secretary, Department of the Treasury (Feb. 20, 2013).

⁹¹ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 1, at 75 (May 14, 2013).

⁹² *Id.* at 94.

⁹³ *Id.* at 28.

⁹⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 2, at 60 (May 23, 2013).

⁹⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 247 (May 29, 2013).

procurements. But if you concur with it, you are more than in your right to continue moving forward with the requirement.⁹⁶

E. Contracting Officers Reported No Inappropriate Influence

No contracting officers interviewed by Committee staff reported any inappropriate or undue influence by Mr. Roseman on behalf of Mr. Castillo's companies. Committee staff had this exchange with the contracting officer on the Laptop/Desktop BPA contract:

Q: Did Mr. Roseman ever direct you to assist Mr. Castillo or his company in a way that you thought was unusual or inappropriate?

A: No.

Q: Did he ever—did Mr. Roseman ever ask you to pay special attention to Mr. Castillo or any company that he worked with?

A: No.

Q: Did Mr. Roseman ever direct you to assist any vendor or contractor in a way that you thought was unusual or inappropriate?

A: No.

Q: Do you have any reason to believe that Mr. Roseman gave Mr. Castillo special treatment because of a personal relationship or preference?

A: No.⁹⁷

This contracting officer told Committee staff that she awarded the Laptop/Desktop BPA to Strong Castle based on a "best-value" model.⁹⁸ She explained that Strong Castle's proposal was "technically superior" to the proposal of its competitor, GAI. She also explained that, although Strong Castle's price of \$79.9 million was approximately \$3.5 million higher than the \$76.4 million price offered by GAI, Strong Castle's socioeconomic status rating was "exceptional" based on its HUBZone status. She wrote in her Contracting Officer Statement for this award:

GAI only received an acceptable rating for socio-economic status, the most important evaluation factor. Given the relatively modest price differential

⁹⁶ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 2, at 59 (May 23, 2013).

⁹⁷ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 1, at 194 (May 14, 2013).

⁹⁸ *Id.* at 149-50.

between Signet and GAI, Signet's technically superior proposal was determined to offer the best value. Therefore, an award was made to Signet on December 7, 2012.⁹⁹

The contracting officer for the IBM SRO contract also told Committee staff that he received no inappropriate or undue influence by Mr. Roseman. He stated that Mr. Roseman suggested that he invite not only Mr. Castillo's company, but also his competitors, Blue Tech and Pan-America, to a meeting of vendors.¹⁰⁰ He stated that Mr. Roseman did not instruct him to award the contract to any company:

Q: Did Mr. Roseman ever tell you to award the contract to Signet—or Strong Castle? Excuse me.

A: He did not tell me. I saw an email about getting credit for both HUBZone and service-disabled veteran-owned business. But he never told me to award to Signet or to award to Blue Tech.¹⁰¹

When asked whether Mr. Roseman's e-mail noting that Strong Castle was both a HUBZone and an SDVOSB certified company had any impact on his award decision, the contracting officer said it did not.¹⁰² He explained that Strong Castle's proposal provided the "best-value" to the government because it was nearly \$400,000 lower than its competitor Blue Tech, and because the company was HUBZone preferred.¹⁰³ The contracting officer stated that the technical evaluation team "couldn't see much of a difference between the two." He concluded:

[F]or a software buy, when they are that extremely close, personally, I could not justify that price difference of \$400,000 some for a communication plan, some additional resources, and one other minor thing I think it was.¹⁰⁴

Mr. Roseman's direct supervisor, the Director of the Office of Information Technology Acquisitions, informed Committee staff that there was nothing usual or inappropriate about either contract award:

⁹⁹ Internal Revenue Service, Statement of Contracting Officer, Re: Protests of Government Acquisitions, Inc. B-407877.2 and PCi Tec, Inc. B-4077877.3 under RFQ TIRN0-12-Q-00083 (Jan. 16, 2013).

¹⁰⁰ House Committee on Oversight and Government Reform, Transcribed Interview of Contracting Officer 2, at 34-35 (May 23, 2013).

¹⁰¹ *Id.* at 189.

¹⁰² *Id.* at 190.

¹⁰³ *Id.* at 133.

¹⁰⁴ *Id.* at 133.

Q: Because of your review of the CRB, you believe that the IBM SRO was awarded on its merits?

A: Yes, I do.

Q: Do you also believe that the laptop/desktop award was awarded on its merits despite the possible appearance of partiality between Mr. Roseman, and Mr. Castillo?

A: Yes, I do, yes, I do.¹⁰⁵

On March 25, 2013, GAO denied GAI's bid protest of the Laptop/Desktop BPA, finding that the IRS reasonably awarded the contract on its merits. GAO concluded that the IRS's application of the "best value" to the government analysis "was reasonable and adequately documented in the source selection decision."¹⁰⁶ GAO's decision explained:

The RFQ provided that the non-price factors, when combined, were more important than price. RFQ at 38. Further, the RFQ indicated a "strong preference for small business participation," stating that "[a]s quotes are determined to be technically compliant, socio-economic status becomes more important than price." Id. Given the greater importance under the solicitation of the non-price factors generally, and specifically the solicitation's emphasis on socio-economic status, we find unobjectionable the agency's stated determination that Signet's significant advantage under the socio-economic factor—an "excellent" rating compared to GAI's "acceptable" rating—warranted payment of an approximately 4% price premium.¹⁰⁷

F. HUBZone Preferred Contracts Consistent with Federal Policy

The contracting officers' decisions to make the Laptop/Desktop BPA and IBM SRO HUBZone preferred solicitations were consistent with federal guidance for the agency's broader small business goals. According to a 2011 Memo to Chief Acquisition Officers, OMB set guidance for all agencies to meet small business socio-economic goals in their contracting. OMB set an overall goal that 23% of federal procurement dollars go to small businesses. Within that number, there is a 3% goal for SDVOSB companies and a 3% goal for HUBZone

¹⁰⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 258 (May 29, 2013).

¹⁰⁶ Government Accountability Office, *In the Matter of Government Acquisitions, Inc.; PCi Tec, Inc.*, File: B-407877.2; B-407877.3; B-407877.4 (Mar. 25, 2013).

¹⁰⁷ Id.

companies. OMB explained that agencies can preference HUBZone and other socio-economic factors above price in non-set aside contracts.¹⁰⁸ The guidance states:

FAR 8.405-5(b) authorizes agencies to consider socio-economic status when identifying contractors for consideration or competition for award of a blanket purchase agreement. These criteria may be used to give preference to small businesses over large businesses in a competition. ... The following factors will be used by the government to evaluate proposals in descending order of importance: (1) socio-economic, (2) past performance, (3) price, (4) technical approach, and (5) management work plan & key personnel.¹⁰⁹

OMB distributed additional guidance in June 2012 stating that agencies should “hold senior leadership accountable for meeting your agency’s small business goals, including any of the statutory socio-economic goals.”¹¹⁰ IRS policy also emphasized the significance of meeting socio-economic goals:

The GSA and the SBA strongly support the participation of small business concerns in the FSS program. ... [I]n order to support the efforts to facilitate this idea, GSA has allowed agencies to make socioeconomic status a primary evaluation factor when making a best value determination.¹¹¹

Documents and witness accounts demonstrate that IRS procurement officials worked to help the IRS meet its socio-economic goals. As Mr. Roseman’s direct supervisor, the Director of the IRS Office of Information Technology Acquisition, told Committee staff:

[T]here was an objective for the agency to meet its small business goals. And with regard to that, for example, one of the things that I was doing is that I was speaking that up amongst my organization. And so whenever one of my organizational members made an award that had socioeconomic concern status, I tried to acknowledge it.¹¹²

¹⁰⁸ Memo from Daniel I. Gordon, Administrator for Federal Procurement Policy, Office of Management and Budget, and Karen G. Mills, Administrator, Small Business Administration, to Chief Acquisition Officers, *et al.* (Feb. 11, 2011).

¹⁰⁹ *Id.*

¹¹⁰ Memo from Joseph G. Jordan, Administrator for Federal Procurement Policy, Office of Management and Budget, and Karen G. Mills, Administrator, Small Business Administration, to Chief Acquisition Officers, *et al.* (June 6, 2012).

¹¹¹ Internal Revenue Service, Policy and Procedures Memo 19.1 (Mar. 17, 2011).

¹¹² House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 115 (May 29, 2013).

The Director explained that he did not direct anyone to cut corners in order to secure a contract for any company because of its socio-economic certification:

Q: Have you ever directed your contracting officers to cut corners in order to meet their socioeconomic goals?

A: The answer to the question is no.

Q: If you became aware that your accounting officers were cutting corners in order to meet the socioeconomic goals, how would you handle that situation?

A: I would bring them into my office. I would convey to them that what they did was inappropriate. I would try to assess the egregiousness of their actions and then quite frankly, I would act based on any government criteria relative to how egregious their action was.

Q: And have you ever been led to believe that meeting the socioeconomic goals outlined by OMB or Treasury or, excuse me, failing to meet those objectives would have an adverse effect on your job status?

A: The answer to that question is no.¹¹³

G. Mr. Roseman's Decision Not to Appear Before Committee

On June 17, 2013, Chairman Issa invited Mr. Roseman to testify at Wednesday's hearing about "the contracts between the IRS and Strong Castle, as well as IRS IT acquisition policies and procedures."¹¹⁴ The next day, Mr. Roseman's attorney responded by letter stating that, based on his advice, "Mr. Roseman has decided that he will not appear on June 26th to testify." He explained that "because of public comments made by a member of your Committee, it was not in my client's best interest that he appear to testify."¹¹⁵

Mr. Roseman's attorney was referring to public statements made by Chairman Issa in February 2013 suggesting that Mr. Roseman may have engaged in potential criminal activity. Specifically, on February 20, 2013, Chairman Issa wrote in a letter to the Treasury Department:

¹¹³ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Internal Revenue Service Office of Information Technology Acquisition, at 186-187 (May 29, 2013).

¹¹⁴ Letter from House Committee on Oversight and Government Reform Chairman Darrell E. Issa to Gregory Roseman, Deputy Director, Enterprise Networks and Tier Systems Support, Internal Revenue Service (June 17, 2013).

¹¹⁵ Letter from Roscoe C. Howard, Jr. to House Committee on Oversight and Government Reform Chairman Darrell E. Issa (June 18, 2013).

At best, this is a conflict of interest that runs afoul of Part 3 of the Federal Acquisition Regulation. At worst, the IRS may have a situation in which a contracting official is awarding sole source contracts based on false justifications, or receiving kickbacks in exchange for government contracts.¹¹⁶

The next day, Chairman Issa appeared on national television and stated:

We have the Inspector General now telling us he is investigating. As you know, IGs have criminal authority, and we expect to make sure we get to the bottom of both the bad idea, the misuse of funds, and any criminal wrongdoing.¹¹⁷

On June 20, 2013, Chairman Issa issued a subpoena to compel Mr. Roseman's testimony before the Committee on Wednesday. On June 24, 2013, Mr. Roseman's attorney responded by letter stating: "I am writing to inform you that Mr. Roseman, through his counsel, hereby formally invokes his Fifth Amendment Privilege." He stated further:

I am also informed that the Committee would like to have Mr. Roseman present as they display messages from Mr. Roseman that appeared on his personal cell phone while questioning other witnesses about the content of the messages. ... I do not wish for my client to come before the Committee simply for the public display of him invoking his rights, or to have him sit there as he pictured while his messages are opined upon by his colleagues. ...

I will be present for the hearing on June 26th in response to the subpoena, as Mr. Roseman's counsel. However, as the subpoena is clearly for testimony only, my client will be advised to stay out of the hearing since no testimony will be sought, and without recognizable protections, none will be given.¹¹⁸

In previous instances involving individuals invoking their Fifth Amendment right not to testify, Chairman Issa has required witnesses to appear at hearings and personally invoke this protection, arguing that a witness might choose to change his or her mind up until the last moment.¹¹⁹ In this case, the Chairman could achieve the identical goal through a subpoenaed deposition prior to the hearing, but the Chairman has chosen not to do so.

¹¹⁶ Letter from House Committee on Oversight and Government Reform Chairman Darrell E. Issa to Neal Wolin, Acting Secretary, Department of the Treasury (Feb. 20, 2013) (online at www.issa.house.gov/district-blog/2013/03/investigating-an-alleged-500-million-contracting-fraud-at-the-irs/) (accessed June 22, 2013).

¹¹⁷ *On the Record with Greta Van Susteren, Interview of Chairman Darrell Issa*, Fox News (Feb. 21, 2013) (online at www.foxnews.com/on-air/on-the-record/index.html).

¹¹⁸ Letter from Roscoe C. Howard, Jr. to House Committee on Oversight and Government Reform Chairman Darrell E. Issa (June 24, 2013).

¹¹⁹ *See, e.g., House Committee on Oversight and Government Reform, Hearing on The IRS: Targeting Americans for Their Political Beliefs*, 113th Cong. (May 22, 2013).

III. IRS ACTIONS IN RESPONSE TO INVESTIGATION

As a result of SBA's decision to decertify Strong Castle as a HUBZone contractor, the IRS has stated that it will not make additional purchases under contracts it had entered into with the company, except for the IBM/Software Relationship Offering BPA. According to the IRS, the agency has a "critical and ongoing need for the services" provided under this contract, and "failure to continue with the BPA would have significant cost implications and create critical operational challenges in the immediate term for the IRS."¹²⁰ Unless there is "a finding of fraud or other wrongdoing by Strong Castle," the IRS will continue to place orders under this contract while it explores other options to obtain these services in the future.¹²¹

The IRS also initiated a review of all documentation and correspondence related to the acquisitions at issue, as well as an internal peer review focused on overall procurement policy and processes. The Department of the Treasury's Office of the Procurement Executive will be expanding its regular assessment of the IRS Procurement Office to include a review of Small Business Program Requirements for compliance with federal laws and regulations.¹²²

With respect to Mr. Roseman, on May 16, 2013, one day after being notified by the Inspector General about Mr. Roseman's personal relationship with Mr. Castillo, the IRS "took immediate steps to initiate the process of reassigning the employee from his management position to a new role as a special project officer with duties that do not involve the award or administration of contract actions, pending the outcome of TIGTA's investigation."¹²³

The IRS will be increasing the training provided to its procurement officials. Annual training will be conducted by officials from the IRS Office of Chief Counsel focusing on gift rules, conflicts of interest, impartiality and the appearance of impropriety, and the misuse of official positions. In addition, a town hall led by the Director of Procurement for all procurement staff will be held on June 26, 2013, which will include a two hour session on ethics conducted by the Office of Chief Counsel that will focus on gifts and conflicts of interest.¹²⁴

Finally, the IRS issued a memorandum from Beth Tucker, Deputy Commissioner for Operations Support, clarifying IRS guidance on the use of personal text messaging for official business. The memo notes that IRS policy "prohibits employees from using non-IRS/Treasury email accounts for any government or official purpose," and updated policy "will clarify that

¹²⁰ Internal Revenue Service, *Existing and Enhanced Procurement Controls* (June 17, 2013).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

employees may not send or receive text messages about official business on personally-owned cell phones, smartphones or any other device.”¹²⁵

IV. WITNESSES

Ms. Beth Tucker

Deputy Commissioner, Operations Support
Internal Revenue Service

Mr. Gregory Roseman

Deputy Director, Enterprise Networks and Tier Systems Support, Current Project Officer
Internal Revenue Service

Mr. Michael Chodos

Deputy General Counsel
Small Business Administration

The Honorable William A. Sisk

Acting Deputy Commissioner of Federal Acquisition Services
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Senior Advisor for Compensation Service, Veterans Benefits Administration
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Mr. Braulio Castillo

President and Chief Executive Officer
Strong Castle, Inc.

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¹²⁵ Memorandum from Beth Tucker, Deputy Commissioner for Operations Support, Internal Revenue Service, Clarifying Guidance on Use of Personal Text Messaging for Official Business (June 7, 2013).