Investigative Report of MMS – Federal Business Solutions Contracts (Redacted)

Investigative Report

Federal Business Solutions Contracts

Report Date: September 4, 2008

This report contains information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6), and (b)(7)(C) of the Freedom of Information Act. Supporting documentation for this report may be obtained by sending a written request to the OIG Freedom of Information Office.

RESULTS IN BRIEF

In June 2005, a confidential informant (CI) telephoned the U.S. Department of the Interior (DOI), Office of Inspector General (OIG), to report that the Minerals Management Service (MMS), Minerals Revenue Management (MRM), had hired two retired Senior Executive Service (SES) MMS employees for high, six-figure salaries. After an initial referral to MMS, we opened an official investigation of this matter in March of 2007 when additional information came to our attention during a separate MMS investigation.

Our investigation determined that MRM Associate Director Lucy Querques Denett had acted together with her Special Assistant, Jimmy Mayberry, to create a lucrative contract for Mayberry upon his MMS retirement. Not only did Denett personally orchestrate the creation of the contract with Mayberry, but she also served on the Technical Proposal Evaluation Committee (TPEC) that rated Mayberry's company and subsequently sought a modification to the contract that increased its funding.

Moreover, we determined that Mayberry actually drafted the Statement of Work for the contract while he was still employed by MMS and that former MMS Deputy Associate Director Milton Dial participated personally and substantially in awarding the contract to Mayberry. Dial served on the TPEC and also acted as MMS' contracting officer's technical representative (COTR). Shortly after Dial retired from MMS, he went to work for Mayberry on this same contract.

This case is being referred to the Department of Justice (DOJ) for whatever action it deems appropriate.

BACKGROUND

In December 2002, Lucy Querques Denett was the MRM Associate Director for MMS, Jimmy Mayberry was her Special Assistant, and Milton Dial was the Assistant Program Director for MMS' Royalty in Kind (RIK) Program. All three SES employees were close colleagues and friends who had worked together for MMS since 1982.

On January 3, 2003, Mayberry retired from MMS and started a consulting company, which he called Federal Business Solutions (FBS). On February 21, 2003, MMS announced a contract solicitation for technical and managerial advisory services. On June 2, 2003, the contract was awarded to Mayberry's company, FBS. From the contract's inception until the date of his retirement on September 3, 2004, Dial served as the COTR for the contract awarded to FBS. On February 22, 2005, less than 6 months after he retired from MMS, Dial began working for Mayberry under the FBS contract.

As the original FBS contract approached expiration, MMS issued a second solicitation for a technical and managerial advisory services contract on October 4, 2005. On January 17, 2006, MMS awarded the new contract to FBS. When we initiated this investigation, Mayberry and Dial were performing services for MMS under the second FBS contract.

DETAILS OF INVESTIGATION

In June 2005, a CI reported to the OIG that two former MMS SES employees were rehired by MMS' MRM division for high, six-figure salaries. On December 7, 2005, the OIG referred the matter to MMS for internal review, which MMS responded to in a March 8, 2006 memorandum to the OIG. In the memorandum, Denett was quoted as acknowledging that two former MMS SES employees were working under a contract with MMS; however, she denied any impropriety related to the formation and existence of the contract. According to Denett, "the acquisition was accomplished through a formal open competitive process conducted by MMS's procurement officials," and "FBS was awarded the contract based on the merits of its technical and cost proposals."

The OIG subsequently opened an investigation in March 2007 after developing additional information in a related investigation. Our investigation of this matter lasted approximately 6 months and included 20 personal interviews, along with the examination of over 25,000 documents and e-mails.

Our investigative findings are organized into the following eight sections:

- Background of Denett, Mayberry, and Dial
- Creation of Contract
- Award of First FBS Contract
- Dial's Employment with FBS
- Award of Second FBS Contract
- Potential Ethics Violations
- Termination of Second FBS Contract
- Potential Losses of Competing Companies

Background of Denett, Mayberry and Dial

Lucy Querques Denett stated that she began working for MMS when the agency was formed in 1982, and she became the associate director of MRM in January 1997 – a position she held until January 31, 2008, when she retired. According to Denett, she has known Mayberry and Dial for many years as they began working for her in 1997 when she became the associate director. Denett told investigators that she considered them both to be friends. She said Mayberry served as her special assistant from 1997 until he retired in January 2003. Dial was serving as Denett's deputy associate director when he retired in September 2004.

Jimmy Mayberry stated that he began working for MMS when the agency was formed in 1982. He became an SES employee for MMS in 1985 and served twice as an associate director during the 1980s. Mayberry said he relocated from Denver to Dallas in 1993, where he served as the director of MMS' Compliance Program through 1996. In 1996, Mayberry said he became the special assistant to the associate director for the MRM Re-engineering Program. In this capacity, Mayberry said he led the effort to update the core business processes of MRM, such as its policies and procedures and its informational technology systems.

In 2000, Mayberry's SES special assistant position was abolished with the completion of the Re-engineering Program. According to Mayberry, at this point he elected to take a down-grade to a GS-15 to become the special assistant to the associate director "at large" in order to remain in Dallas. In this position, Mayberry said he played a supporting and advisory role to Associate Director Denett by assisting with briefing papers, speeches, and the preparation and planning of meetings and strategy sessions. Mayberry said he served as Denett's special assistant until he retired on January 3, 2003.

Milton Dial also began working for MMS at the agency's inception in 1982. He became an SES employee in January 2001 when he became the assistant program director for the RIK Program. In October 2003, Dial became the deputy associate director for MRM and reported directly to Denett. He remained in that position until his retirement in September 2004.

Creation of Contract

According to Denett, Mayberry informed her of his intention to retire from MMS approximately 2 to 3 months before he retired in January 2003. Denett stated that after she was unsuccessful in attempting to dissuade Mayberry from retiring, she asked if he would consider becoming a retired annuitant. According to Denett, Mayberry told her that he was "not interested" in doing so.

Denett stated that once she saw that Mayberry was intent on retiring, she and Mayberry discussed the option that he could continue working for MMS under an "8a sole-source contract." Denett confirmed that she inquired with MMS' Procurement Division about pursuing an 8a sole-source contract specifically to retain Mayberry.

Denett told investigators that she initially asked Robert Brown, MMS Associate Director for Administration and Budget, how she could bring back a retired federal employee (Mayberry), and Brown directed her to speak directly with the procurement division. Based upon Brown's advice, Denett said she contacted the MMS Procurement Division and obtained information about 8a sole-source contracting. Denett stated that after reviewing the information, she and Mayberry decided to not pursue such a contract, specifically because she did not feel comfortable with "paying overhead" to an 8a sole-source contractor.

Denett's statements regarding her inquiry into an 8a sole-source contract for the benefit of Mayberry is supported by a series of e-mails beginning November 12, 2002, through November 21, 2002. These e-mails between Denett, Mayberry, and MMS procurement official David Sutfin reveal that Mayberry and Denett were both actively involved in this effort.

Before investigators showed Mayberry the subject e-mails, investigators asked if prior to his retirement he had ever spoken with Denett about the possibility of working for MMS as a contractor after he retired. Mayberry responded, "No. No. No. Never. Never." Even after reviewing the e-mails, Mayberry denied that he ever discussed returning to MMS in any capacity, as a retired annuitant or as a contractor. Mayberry opined that while this may have been Denett's goal, she never discussed such intentions with him. Investigators brought to Mayberry's attention that *he* had sent the initial inquiry about 8a sole-source contracting to

Denett, which she then forwarded to the procurement division for answers about "using a contractor to bring in a retired Federal employee." When investigators asked Mayberry if he could explain this fact, he said, "No. I really can't."

Mayberry then stated that there was no doubt in his mind that Denett held him in high regard and that, if possible, she would want him to provide services to MMS in the future. He supported this belief by saying, "I do remember her asking me at one point, if we were able to create something in the future, would you even be interested, would you even put your name in, and I said I would seriously consider that." Mayberry continued, saying, "Was Lucy [Denett] interested in finding a way, or having a way of bringing me back to continue to help the program at some point? I think she did – I clearly think she did." He further explained that Denett told him before he retired that she was interested in having him work for her "sometime down the road." He ultimately admitted that he and Denett had many discussions about the various options that would allow him to return and perform work for MMS. Mayberry did not remember specifically if they discussed 8a sole-source contracting or competitive contracting but said, "[N]othing was ruled out." He explained that he had planned on retiring for "many, many months" before he actually retired, and Denett had tried talking him out of retirement.

According to Denett, after she and Mayberry decided not to pursue an 8a sole-source contract, she decided that she needed to create a competitive contract for consulting services in order to replace Mayberry. Denett said she discussed her plan to create such a contract with Mayberry. Whereas Mayberry stated that Denett asked if he would compete for such a contract, Denett did not remember specifically asking Mayberry if he would submit a bid but said she certainly wanted him to compete. Denett explained that after discussing her plan with Mayberry, he informed her that he was planning on creating a consulting services company.

Mayberry told investigators that he started his consulting company, FBS, in early 2003 after he retired from MMS. He explained that he had been thinking of starting FBS while still working for MMS because he "planned to hit the ground running" after retirement. Mayberry said, "I was already forming FBS [before retirement]; I had that essentially planned out – the name and everything else – as soon as I retired, I went and registered the company to get the name legally set up." He further explained, "[I]t was obvious MMS was going to have a continuing need in strategic planning because they were always trying to improve. So I am not surprised they came out with a competition." Mayberry also stated that he "saw [the solicitation] on GovWorks" and that he was "glad to have the opportunity to compete for it." When asked if he knew that a contract would be coming out prior to the time he saw the solicitation, Mayberry said, "No, absolutely not."

In contrast to Denett's statement that she and Mayberry had discussed her plan to issue a competitive contract for consulting services, Mayberry told investigators that he had never spoken with Denett about the solicitation before or after it was issued. He explained that any such contact or discussion would have been improper and he did not want to place Denett or anyone else "at risk of an impropriety about a contract" because "that wouldn't make any sense."

However, according to Denett, once her attempts to convince Mayberry to come back as a retired annuitant or an 8a sole-source contractor had failed, she decided to create a competitive contract

for consulting services and asked Mayberry to draft the contract's Statement of Work. Investigators asked Denett if, given her prior efforts to retain Mayberry's services, she thought asking Mayberry to draft a Statement of Work for a future competitive contract for which he intended to submit a proposal created a potential conflict of interest. Denett responded by saying, "As you and I are talking now, yeah, I can see what you are saying, but again, it's still going to be competitive – [Mayberry] wasn't promised [the contract]."

The fact that Mayberry drafted the Statement of Work as an MMS employee for the very contract that he subsequently bid on after he retired is supported by the following e-mail string:

- E-mail from Denett to MMS Contracting Officer Jane Carlson, dated December 2, 2002, stating, "Any luck in finding examples of SOWs [Statement of Work] that may be helpful to me in drafting one that I'll need to obtain the consulting support we discussed?"

- E-mail from MMS contracting specialist to Denett, dated December 6, 2002, stating, "Jane Carlson asked me to send you a copy of the statement of work (SOW) we used for the MMS Performance Report contract. I have attached the SOW. If you have questions please let us know."

- E-mail from Denett to MMS contracting specialist (responding to the contracting specialist's December 6, 2002 e-mail), dated December 7, 2002, at **9:22 a.m.**, stating, "[Contracting specialist], thank you, I'll review and call next week with my comments."

- E-mail from Denett to Mayberry, dated December 7, 2002, at **9:25 a.m.**, stating, "Hi Jimmy, I got some information on our the [sic] other activity. I'm not certain its [sic] on point, but it's a start. I'll discuss with you on Monday. I call you on my cell phone. I'll still be out."

- E-mail from Mayberry to Denett's home e-mail address, dated December 12, 2002, at 7:12 p.m., containing a draft Statement of Work with the following message: "This was put together rather quickly. I will explain the approach tomorrow."

After reviewing the subject e-mails, Mayberry said, "I do remember that. She asked me to do that – that's right – she was back then contemplating some kind of contract at some point – but whether or not that was ever going to happen or whether or not I was ever going to be a part of that is a completely different issue." He added, "It occurred to me that maybe it would be an opportunity that would materialize – but how would I know that?" Mayberry then explained that when the solicitation was announced after he retired, he "was pleased to have the opportunity to compete" for the contract. Mayberry acknowledged that Denett had told him before he retired that she "hoped he would be available" to perform consulting work in the future; however, Mayberry noted that Denett did not make any commitments to him regarding such work.

Mayberry said, "I did not draft a Statement of Work for a contract for myself." He explained that he drafted the Statement of Work simply because Denett asked him to do so, and he had no idea if, or when, such a contract would ever be announced by MMS.

Regarding Mayberry's statement that he never considered submitting a proposal for a contract containing the Statement of Work he had drafted, investigators asked Denett if Mayberry knew that she was trying to get the contract out soon after his retirement. Denett responded, "Sure, yeah." She explained, "I did say I wanted somebody soon after he left, because we needed the support." ***Agent's Note:*** *Regarding Mayberry's knowledge that Denett intended to issue a solicitation for the contract soon after Mayberry retired, investigators identified an e-mail string establishing that a meeting to discuss the future contract between Contracting Officer Carlson and Denett had been scheduled for December 13, 2002. This meeting was to take place the day after Mayberry sent Denett the Statement of Work to her personal e-mail address, where he indicated it was drafted "pretty quickly."*

Mayberry acknowledged that the Statement of Work he drafted described duties and responsibilities that were essentially identical to the duties he had been performing as Denett's special assistant during his final years of employment with MMS. Investigators asked Mayberry if, while he was drafting the Statement of Work, it occurred to him that he would be bidding on such a contract. Initially, Mayberry said, "I never said that after I drafted the Statement of Work that I never thought about the fact that something might come out and I might have an interest in it." After again being asked if it occurred to him *while* he was drafting the Statement of Work that he might submit a proposal to a solicitation that contained the same Statement of Work, Mayberry responded, "Maybe it did, maybe it didn't – I don't know – all I was doing was drafting what I was asked to put together. That's all I was doing. Even if a contract was coming, I knew I was going to have to compete for a contract, at least that's what I presumed."

Based upon this response, investigators asked Mayberry whether he thought drafting the Statement of Work was proper, if he was presuming he would need to compete for the upcoming contract. Mayberry replied, "Statement of Work, Statement of Work, I don't think…What does it matter who drafts the Statement of Work?" ***Agent's Note:*** *The Federal Acquisition Regulations prohibit a contractor from submitting a proposal to a solicitation based on a Statement of Work that was prepared by the contractor.*

On December 17, 2002, Denett sent an e-mail to Carlson reminding her to send her the evaluation criteria she needed to include in the Statement of Work she was developing.

One week after Mayberry supplied the Statement of Work to Denett, on December 20, 2002, Denett sent an e-mail to Mayberry describing Dial's dismay about Mayberry's upcoming retirement. The e-mail stated the following:

> Hi Jimmy,
>
> I just got off the phone with Milt. I was home today getting ready for my trip to NJ. Anyway, at the end of the day, Johnnie asked for a paper on RIK, due Monday, Cathy called MIlt [sic] who was also trying to shut down and leave for Las Vegas. He got upset that this request came in so late and he would have to work late into the night to prepare it and folks were gone, etc. He told Cathy he was 'done'. Cathy called me, I called Milt and told him not to do anything I

> would call Johnnie. Anyway to make a long story short, I got the due date delayed, calmed Milt down. I think he backed away from resigning.
>
> He then told me you told him you were retiring and that that depressed him, he would be 'home alone'. I said to him, how do you think I'd feel, if both of you decided to go at the same time - - talk about being home alone. We discussed opportunities. We will get together and talk when we both get back on January 2, [Dial] will help me.

After reviewing the above e-mail, Mayberry said, "It looks to me like, if you piece all the pieces together, it looks like [Denett] was working toward what ended up being a competitive announcement and somehow Milt was engaged." Investigators pointed out that if this were the case, then with respect to Denett's statement that "[Dial] will help me," Mayberry must have known about the upcoming solicitation in order for Denett's statement to have any context. In response to this logic, Mayberry responded, "I don't know."

After Denett reviewed the e-mail, investigators asked her why she stated to Mayberry, "[Dial] will help me." Denett acknowledged that she was informing Mayberry that Dial would be helping her put the competitive solicitation together that she had been discussing with Mayberry.

Regarding Denett's statement in the e-mail to Mayberry that she and Dial "discussed opportunities," Denett confirmed that she "probably" discussed with Dial the fact that she was creating a competitive contract for consulting services and that she was anticipating Mayberry would compete for the contract. Investigators then asked Denett if she ever talked to Dial about the possibility of Dial working for Mayberry after he retired, if Mayberry won the contract. Denett responded, "I don't know, I may have."

During his interview, Dial stated that he could not recall this discussion with Denett or what these opportunities could have been. "It was a long time ago," Dial said.

On January 3, 2003, Mayberry retired from MMS.

Award of First FBS Contract

On January 8, 2003, Denett sent an e-mail to Dial with the Statement of Work Mayberry drafted. Attached to the Statement of Work was the following note: "Per discussion."

On January 24, 2003, Denett sent an e-mail to Carlson with the Statement of Work attached. In the e-mail, Denett asked Carlson the following questions: "How soon can you issue the RFP [Request for Proposal – solicitation for the contract]? Please call me when it is issued. How long will the solicitation be open?"

In response, on January 27, 2003, Carlson e-mailed Denett a sample of evaluation criteria needed to compliment the Statement of Work. Upon receiving the sample evaluation criteria from Carlson, Denett forwarded the criteria to Dial the next day, January 28, 2003, with a one-word message, "Help." Later that same day, Dial sent an e-mail to Denett with draft evaluation

criteria and stated, "Attached is a write-up of the Key Qualifications that compliments the draft statement of work that you forwarded earlier to Jane Carlson." On January 29, 2003, Denett forwarded the Key Qualifications drafted by Dial to Carlson for utilization in the upcoming solicitation.

Investigators showed Denett the above-noted e-mails where she asked Dial to draft the Key Qualifications (evaluation criteria), based upon the Statement of Work drafted by Mayberry, which would be used to evaluate the competitors for the solicitation. Investigators asked Denett if she thought asking Dial, a friend of Mayberry's, to draft the Key Qualifications was proper when Dial knew Mayberry would be competing for the contract. Denett responded, "Asking me now, my answer would be no. What was my answer then? – obviously I did it and it doesn't look proper."

Investigators then informed Denett about an inquiry by a potential competitor to MMS' procurement division for the second FBS contract solicitation in 2005, which contained essentially the same evaluation criteria that Dial drafted for the initial 2003 solicitation. Investigators informed her that the person making the inquiry suggested that two of the Key Qualifications were clearly "wired" to a former MMS-MRM employee. Investigators showed the following two Key Qualifications identified to Denett:

- Proposed staff demonstrate the following skills and direct experience, that are considered critical to timely and successful accomplishment of assigned projects:

1. Expert knowledge and understanding of the statutory, regulatory and policy requirements that guide the MMS in the management of Federal and Indian mineral royalties whether collected in value or kind.

3. Specific knowledge and experience in financial accounting, compliance operations, asset management and Indian trust management associated with oil and gas and solid mineral royalty revenues.

Investigators told Denett that the OIG reviewed the Technical Proposal Evaluation Committee's (TPEC) evaluation of the competitors in the initial solicitation and had determined that the proposals submitted by all 15 offerors, excluding FBS, were deemed by the TPEC to contain the very same weakness in relation to the Key Qualifications noted above. Investigators advised Denett that the wording used in the TPEC synopsis evaluations for all of the remaining 15 offerors was almost identical with respect to the criteria. Specifically, all of the losing 15 offerors were deemed to have a weakness that the TPEC described in the following manner:

> The offeror demonstrates very limited experience with or exposure to statutory, regulatory or policy requirements that guide the business activities of the MRM in the collection, accounting for and verification of Federal and Indian mineral royalties. Furthermore, the offeror demonstrates limited knowledge and

experience in financial accounting, compliance operations, asset management and Indian trust management associated with oil and gas and solid mineral royalty revenues.

Agent's Note: *FBS, on the other hand, was rated by TPEC as having no weaknesses in these criteria and was the only company that ultimately received an overall "Excellent" rating by the TPEC.*

Investigators then asked Denett if she believed this fact contributed to a perception that Dial may have created certain Key Qualifications that were written to help his friend win a contract. Denett responded by stating, "I agree the perception is bad." Investigators asked Denett if she believed this was a fair competition. She replied, "I believe I tried to make it fair – it doesn't look that way, but I did try."

Investigators also informed Mayberry about the inquiry made by a competitor in relation to the second solicitation that FBS won in 2005. Specifically, investigators informed Mayberry that the competitor claimed that two of the five Key Qualifications were written toward a company that employed a former MMS-MRM employee. Investigators also showed Mayberry the two Key Qualifications at issue and asked for his comment. Mayberry replied, "I don't know." Investigators asked Mayberry about his company's rating by the TPEC as "Excellent" in these two Key Qualifications, where the other 15 competitors had weaknesses. Mayberry provided no response to this observation.

Investigators then asked Mayberry if he thought any other company could be rated higher than his with respect to the Key Qualifications, considering the experience required in the qualifications would be derived from the exact duties he had been performing for MMS for the past 22 years. Mayberry stated that many people had the experience described in the Key Qualifications; however, he acknowledged that his years with MMS provided him with a high degree of experience in these areas.

Investigators provided Dial with an e-mail he sent to Denett which included the Key Qualifications used by the TPEC to select a qualified company for the contract (See Attachment 10). When asked by investigators if he had prepared the document, Dial replied, "I believe so." Dial stated that the draft Statement of Work he referred to in his e-mail was for the FBS contract, although he could not state for certain that it was the version he had been shown earlier.

On February 5, 2003, Denett e-mailed a copy of the Key Qualifications to her personal e-mail address. Investigators asked Denett if she sent the Key Qualifications to her personal e-mail address in order to forward them to Mayberry before the solicitation was issued to the public. Denett responded by saying, "I may have, I don't know." She then acknowledged that, if she had done so, it would not have been proper.

On February 21, 2003, less than 2 months after Mayberry retired, the solicitation that ultimately became the initial FBS contract was announced as a combined synopsis/solicitation for technical and advisory management services. In March 2003, MMS set up a TPEC to evaluate any and all

proposals received as a result of the solicitation. MMS personnel on this TPEC included Denett, Dial, and Denett's Chief of Staff, Cathy Hamilton.

OIG investigators asked Denett if she believed it would give the appearance of favoritism if somebody on the TPEC had an association or relationship with one of the people competing for the contract. Denett responded, "[I]t does." Investigators then asked Denett if she remembered who served on the TPEC for the first MMS-FBS contract. She responded that she, Dial, and Hamilton served on the TPEC. After further questioning, Denett readily admitted to investigators that participating in the TPEC that rated Mayberry's competitors was a "very poor" decision on her part.

Investigators then asked Denett if she thought Dial, given his interests in the matter, should have been a member of the TPEC. She responded that "in hindsight," his presence on the TPEC did give a "bad perception." Investigators asked Denett, beyond perceptions whether she believed she and Dial were objective TPEC members. Denett responded that she would like to think they were fair and objective; however, she added, "... I think people do get influenced by who they – what they know."

Regarding her decisions related to this procurement process, Denett stated that she had been preoccupied with a very stressful personal issue at the time.

In her interview, Cathy Hamilton stated that she had known Mayberry since 1989. She also said Mayberry was her supervisor for 1 year in 1989 when she first started working for MMS. Regarding her service on the TPEC in 2003, Hamilton said she had no knowledge that Mayberry planned on competing for the contract until she began reviewing the competitors' proposals to the solicitation. When she realized Mayberry was one of the bidders, she claimed that this fact did not raise any questions in her mind about ethical or procurement standards. She claimed that she had no knowledge of discussions between Denett and Mayberry prior to the solicitation and that she was unaware that Mayberry had actually drafted the Statement of Work.

As a member of the TPEC, Hamilton claimed that she simply performed her duties by objectively evaluating each competitor and ranking the proposals based upon their individual merit. Hamilton said she was not pressured or influenced by Denett during this process.

Agent's Note: *Hamilton sent two personal e-mails to both Dial and Mayberry on July 3, 2006, the month she retired from MMS. The e-mail she sent to Mayberry concluded by stating, "Thanks so much for everything over the years. Your friend, Cathy." The e-mail she sent to Dial 1 minute later concluded by stating, "Thanks so much for all you have done for me. Your friend, Cathy." Also, an e-mail sent to Dial by current Deputy Associate Director for MRM, Deborah Gibbs Tschudy, on May 22, 2006, stated the following: "The reason I am writing is that we are planning Cathy Hamilton's retirement reception. Cathy specifically asked if you [Dial] would be willing to say a few words."*

Sixteen companies, including FBS, submitted "original proposals," and four companies, including FBS, were asked to submit "Best and Final Offers." Ultimately, the TPEC rated FBS "Excellent" for all three criteria used by the TPEC for both its original proposal and its "Best and

Final Offer"; no other company received an "Excellent" rating for any of the three criteria, for either proposal.

When interviewed, Mayberry explained that a TPEC was a committee formed to evaluate proposals submitted by companies in relation to a competitive contract. He further stated that it would be inappropriate for a member of the TPEC to communicate with any company that had a proposal before the TPEC for evaluation in relation to a competitive contract. He said he believed "the standard for serving as a TPEC member would proscribe" that activity as a "certain conflict of interest." Mayberry explained that "if you [as a TPEC member] had a particular knowledge of, or association with, or had anything that would put you in a position of disadvantaging other competitors, for example, or showing favoritism to a competitor, [it] would be a major problem."

Mayberry denied that he knew who served on the TPEC for the original solicitation that FBS won. Investigators informed him that Denett and Dial both served on the three-member TPEC team and asked Mayberry if he believed there was an appearance or actual conflict of interest in having two of his personal friends serving on this TPEC. Mayberry responded, "Not if they follow the procurement rules" and select the best company at the best price.

On June 2, 2003, Contract No. 01-03-CT-71875 was awarded to FBS for 1 base year in the amount of $150,000 – "Time and Materials, base plus two option years." The total contract amount for all 3 years was $449,151, not including travel costs. Dial was appointed as the COTR for the contract.

When investigators asked Mayberry if Dial served as the COTR for the original FBS contract awarded in June of 2003, Mayberry initially stated, "I don't know; I don't think so." After being shown the contract award cover sheet, signed by Mayberry, which listed Dial as the COTR, Mayberry said, "You know what, yes; I do remember that – he was the COTR."

Dial's Employment with FBS

On January 21, 2004, approximately 8 months before his retirement, Dial sent an e-mail to Mayberry that contained "the latest guidance on Post Employment Restrictions for Senior Executives developed by the Department's Ethics Office." The e-mail contained a discussion of recent legislative changes to 18 USC §207(c) and contained the following statement, "How's this for confusion." The guidance read, in part:

> How does the 'senior' employee post-employment restriction work? This provision is known as a 'cooling-off period' as it affects the ability of the former 'senior' employee to represent anyone other than the United States back to the agency where employee served in their last year.

***Agent's Note**: For the year 2004, the guidance defined a "senior" employee as an employee who earned more than $135,805 a year. It should be noted that, at the time of his retirement from the government, Dial was an SES employee earning $145,600 a year.*

After reviewing the January 21, 2004 e-mail, Dial said, "Oh, I remember this." He continued, "For the life of me, I did not understand what this was saying." When questioned about the steps he took to obtain clarification on this issue, Dial said he heard that clarification was going to be issued because others were similarly confused. Dial did not recall if this clarification was ever issued. He also could not recall any discussions he had with Mayberry concerning these restrictions. Dial said he never considered the fact that working for FBS after he left MMS would potentially create a legal issue for him. He also said he never discussed these post-employment restrictions with anyone else.

According to Dial, he understood that the waiting period rules applied only if a person was going to work for industry or a company "on the other side of the table" – in a business that was regulated by the agency for which the person had worked. He stated that it was also his understanding that re-employment with the government "wasn't a problem." Dial said this understanding was based on ethics lectures he attended.

Investigators advised Dial that he had not been "re-employed" by the government; rather he had been hired as a contractor. In response, Dial said, "I guess I didn't see it that way." Dial explained that because FBS was doing work for the government, and the government was FBS' only client, he did not consider his employment to be problematic. "I just found this very confusing," Dial said, and he stated that he expected clarification to be forthcoming, although he did not know if it ever did come, but he assumed it did. When asked why he forwarded these guidelines to Mayberry, Dial said he wanted to see if Mayberry could understand them. When asked if Mayberry clarified the rules for him, Dial said, "I don't remember. I don't think so." Dial again said, "I couldn't figure out what the words were saying, and I was hearing there would be some follow-up clarification on that."

On September 3, 2004, Dial retired from MMS. Dial was still the COTR for the initial FBS contract at the time of his retirement. Subsequent to Dial's retirement, Denett assigned herself as the new COTR for the FBS contract.

On November 23, 2004, MMS Chief Procurement Officer Mark Eckl sent an e-mail to Denett responding to a previous inquiry she had made with him. After apologizing for his delay in responding to her inquiry, Eckl stated, "I've looked at the Federal Business Solution contract file and my initial recommendation would be to pursue a new contract." Eckl explained his reason for making this recommendation in the following manner: "If we add additional work it will more than likely cause a large increase in the [funding] ceiling. This could be problematic from a contract scope standpoint." Denett responded by thanking Eckl for his response and then stated that she wanted to "put some more thought" into what she wanted to do and would contact him again later.

According to Dial, around January 2005, after his retirement, Mayberry asked him if he had an interest in working for FBS. Dial said he did not have any specific plans for his future at that time but was interested in doing some part-time work. Dial claimed he never discussed his plans to work for FBS with Denett before he retired from MMS.

On January 6, 2005, Denett re-contacted Eckl about the FBS contract via e-mail and asked, "Isn't there any way we can modify the current contract and add to the [funding] ceiling cap?" Eckl responded to Denett via e-mail on January 7, 2005, by stating the following:

> Lucy, it is possible to make some adjustments to the ceiling. Generally speaking time and material contract ceilings can be raised. However, we would need to justify in the contract file any increase. There is no clear guidance on how much a ceiling can be raised. A safe number would be 10-15%. Above this amount, it should probably be treated as a new procurement action.

On January 11, 2005, Denett e-mailed Mayberry stating in the subject line, "Mark [Eckl] is on travel until Monday. So I wont [sic] be talking to him until Tuesday because of the federal holiday."

Both Mayberry and Denett admitted to OIG investigators that Denett subsequently asked Mayberry to draft the justification needed to increase the funding for Mayberry's contract. The justification proposed a 14.8 percent increase (550 consulting hours totaling $66,575). ***Agent's Note:*** *This percentage increase was just under the upper limit of the "safe number" range of 10 to 15 percent, which Eckl noted should not be surpassed in order to avoid "a new procurement action."*

On January 25, 2005, Denett e-mailed the justification drafted by Mayberry to Eckl requesting an increase in FBS' contract funding for an additional 550 consulting hours.

On February 22, 2005, Eckl approved Modification No. 4 to the FBS contract, which increased the funding of the contract by $66,575. Within one week, Dial began working for FBS and FBS started billing MMS for work Dial performed on March 1, 2005.

Mayberry told investigators he was the sole employee of FBS, whereas Dial performed work for FBS under a subcontract. Mayberry stated that he and Dial both performed approximately 100 hours per month each under the contract, or approximately 22 to 23 hours per week.

Mayberry told investigators that he did not approach Dial about performing work for FBS until sometime after Dial retired from MMS. He said he called Dial to inquire about his interest and Dial did not readily accept because Dial had interviewed with other companies and had other job opportunities. However, according to Mayberry, he was finally able to convince Dial to work for FBS several months after Dial retired from MMS.

Regarding FBS' subcontract with Dial, Mayberry stated that he had informed Denett that FBS would need to hire another person in order to keep up with the demands of the contract. Mayberry stated that he was not certain whether he told Denett this prior to or after Dial retiring from MMS in September 2004. According to Mayberry, after Dial retired, Dial appeared to be a perfect choice for filling a role with FBS because of his strategic planning experience and the fact that he was located in Denver. Accordingly, after Dial retired, Mayberry contacted him to ask if he was willing to work for FBS and Dial eventually agreed. Mayberry stated that he had no knowledge of any discussions between Denett and Dial regarding Dial's eventual employment with FBS as it related to the modification.

Regarding Modification No. 4 to the FBS contract, Denett told investigators that Mayberry had sent her cost estimates showing that FBS needed more funding in order to keep up with MMS' requests for services. Denett denied talking to Dial about working for FBS prior to his retirement from MMS. She further stated that she did not know if Mayberry talked to Dial about this possibility prior to Dial's retirement; however, she stated that she knew Mayberry "would have wanted to recruit Dial after he retired to work for FBS." Investigators then asked Denett whether she sought the modification to increase the funding for the FBS contract as a vehicle for FBS to be able to hire Dial. Denett denied seeking the modification so that FBS could specifically hire Dial, but rather because she knew FBS was going to need to hire someone.

During his interview, Eckl explained that he was new in his position at the time he was approached by Denett about meeting the needs of the agency through an increase in the FBS contract's funding. Eckl explained that the original contract was a time and materials contract that was funded based upon an estimate and that such estimates were often modified as these types of contracts transpired. As such, he did not feel the request was unusual because the amount being requested was not out of proportion with the original estimate. Accordingly, he said he advised Denett that a justification was needed prior to the modification, which she then provided to him.

On September 29, 2005, 6 months after Dial started working for FBS, Denett sent Dial an e-mail with a subject line reading: "Happy Birthday." Dial responded the next day by sending the following e-mail: "Hi Lucy – Thank you – the years seem to come and go so quickly with life still being interesting and fun, especially with you and Jimmy – thanks again – Milt."

Award of Second FBS Contract

On October 4, 2005, MMS announced Solicitation No. 01-06-RP-039371, which eventually became the second FBS contract. Both the Statement of Work drafted by Mayberry, and the Key Qualifications (evaluation criteria) drafted by Dial, were essentially unchanged from the original 2003 solicitation.

Denett selected herself, Cathy Hamilton, and current MRM Deputy Associate Director Deborah Gibbs Tschudy to be on the TPEC for this solicitation.

When interviewed, Tschudy said she was a certified COTR and that she completed her last required COTR training in February 2007. She stated that the COTR training was composed of a 40-hour curriculum that covered the procurement process "from soup to nuts" and, as of 2007, was required annually in order to maintain COTR certification. According to Tschudy, COTRs learned about the entire procurement process, including a section on ethics, the solicitation process, the award process, monitoring process, termination process, and dispute resolution. Prior to her February 2007 training, Tschudy said she completed the COTR training in 2005 and her initial COTR training occurred in 2002 or 2003.

Tschudy stated that she had also completed the agency-wide annual ethics training and had received supplemental ethics training due to her SES status. She further stated that post-employment restrictions were regularly covered in the ethics training she completed.

Tschudy acknowledged that she knew Mayberry very well and started working with him in 1986. She stated that Mayberry was never her direct-line supervisor; however, she worked on his staff for many years and Mayberry served as her mentor when she was in MMS' Mentor Program. Tschudy stated that Mayberry was a close colleague and she would consider him a friend.

Tschudy stated that she also knew Dial well; however, she noted that she did not start working with him closely until he became the deputy associate director for MRM in September 2003. Tschudy said she considered Dial to be a close colleague until his retirement in September 2004. However, she said she would not consider him to be a close friend.

Tschudy said she spoke with Denett on a daily basis as a result of her normal duties as deputy associate director. She said she met Denett in the mid-1980s and began working directly for her in 2001 when she (Tschudy) became the assistant program director for MRM's Compliance and Asset Management Division. Tschudy said she considered Denett not only to be a close colleague but also a good friend.

According to Tschudy, she became the COTR to the FBS contract in December 2005 for the final month of the original contract prior to its re-competition. She stated that, upon becoming the COTR in December 2005, her focus was on preparing the solicitation for the second FBS contract.

Tschudy acknowledged that Denett asked her to serve on the TPEC for the second contract. Considering her previous statements that Mayberry had served as her mentor and she considered him a close colleague and friend, along with the fact that she also considered Dial a close colleague, investigators asked Tschudy how she could consider herself to be an objective member of a TPEC that was evaluating the proposals of Mayberry and Dial for a competitive contract. Tschudy acknowledged that, in hindsight, given these circumstances, she should have recused herself from the TPEC in order to remove any appearance of a conflict of interest.

Tschudy stated that she did not feel any pressure or influence from Denett to favor FBS while serving on the TPEC for the second FBS contract. She further explained that, absent such pressure or influence, it was "hard not to favor [FBS]" due to their extensive MMS employment experience and incumbency in the first contract.

On December 6, 2005, Tschudy sent an e-mail to Dial stating, "Hi Milt – Tom and I are starting to work on Christmas cards and would like to send you and Sheila one. Would you mind sending me your address? Thanks."

The very next day, on December 7, 2005, the TPEC, consisting of Denett, Hamilton, and Tschudy, completed its evaluation of the proposals presented for Solicitation No. 01-06-RP-039371. According to the evaluation, "[t]he TPEC's overall evaluation of FBS is Excellent"; no other company received an "Excellent" rating. ***Agent's Note:*** *In reviewing the evaluations of the*

other three companies that submitted "Best and Final Offers," the OIG noted that all three losing companies were evaluated to have the very same weakness: no direct experience in minerals revenue management/activities, as required by the Statement of Work.

On December 16, 2005, Dial sent an e-mail to Denett that concluded with the following sentence: "Well, will sign off for now with a Merry Christmas wish to you and Paul – and a big thanks to you for keeping life for me much more interesting and fulfilling – Milt."

On January 17, 2006, Contract No. 01-06-CT-39371 was awarded to FBS for 1 base year in the amount of $339,200, "Time and Materials, base plus two option years"; the total amount for all 3 years was $986,616, not including travel costs. Deborah Gibbs Tschudy was named as the COTR for the contract.

Agent's Note: *The value of the second FBS contract award equates to Mayberry and Dial each earning an annual income of approximately $164,000, excluding travel costs. As noted earlier, Mayberry stated that he and Dial each worked only 22 to 23 hours per week under the contract.*

Potential Ethics Violations

DOI's Ethics Office is currently housed within the Office of the Solicitor (SOL), and while the Ethics Office is responsible for the entire department, each bureau within the department has its own ethics office, including MMS.

Shayla Simmons is an attorney and was the Designated Agency Ethics Official (DAO) for the DOI Ethics Office from December 2001 through October 2006. Art Gary, also an attorney, served as the deputy DAO from June 2002 through August 2004. Mary Ann Seidel served as the ethics specialist for MMS' Ethics Office for 15 years until she retired from government service in 2006.

Based upon her 5 years of experience as the DAO for DOI's Ethics Office, investigators asked Simmons if she believed DOI SES employees were aware of their obligation to seek expert ethics guidance and advice from the DOI Ethics Office, or their respective bureaus' ethics office, if they were confused or uncertain about a potential ethical situation regarding their federal employment. In response, Simmons stated, "Yes." She further elaborated by stating that all SES employees were required to attend annual ethics training, which covered criminal conflict-of-interest and post-employment laws. Additionally, Simmons explained that, during this training, the DOI Ethics Office always stressed to SES employees to "not act alone." Simmons added that it was regularly conveyed to SES employees that they would benefit from seeking such advice inasmuch as if they did so, they would be provided a "safe harbor" from potential prosecution.

Simmons stated that an employee would occasionally come directly to the DOI Ethics Office for advice; however, she noted that the DOI Ethics Office would typically refer the employee back to his or her bureau's ethics office as a starting point for their inquiry. By doing this, Simmons explained that the DOI Ethics Office tried keeping a process intact that would limit an employee's ability to shop for ethics advice between the DOI Ethics Office and the employee's bureau ethics office. According to Simmons, the separate bureau ethics offices would refer

specific matters to the DOI ethics office when a complex issue was presented that required comprehensive legal analysis.

Investigators interviewed former deputy DAO to the DOI Ethics Office, Art Gary, simultaneously with Alton Woods, who had served as the assistant solicitor for the SOL's Branch of Acquisition and Intellectual Property since 1998. According to Woods, his primary responsibility was to advise DOI bureaus in areas of procurement and acquisition-related matters.

Based upon his experience as the deputy DAO for the DOI Ethics Office, investigators asked Gary if he believed DOI SES employees were aware of their obligation to seek expert ethics guidance and advice from the DOI Ethics Office, or their bureau ethics office, if they were confused or uncertain about a potential ethical situation regarding their federal employment. In response, Gary stated, "Yes." He elaborated by stating that all SES employees were required to attend annual ethics training and, through this training, the DOI ethics office tried "mightily" to keep a system intact where DOI employees were regularly informed that they needed to seek guidance from their bureau's designated ethics officer.

According to Seidel, DOI provides annual mandatory training to all members of the SES. Seidel further stated that she personally provided much of the ethics training and she stated that post employment issues were covered. Seidel stated that Dial had a duty to clarify any questions he had regarding ethics laws. Seidel also noted that claiming ignorance to such laws was not a valid excuse for violating them. When asked to clarify this statement, Seidel stated that every SES employee within MMS knew there were many avenues available to them to have questions answered. Further, Seidel stated that MMS Associate Director of Administration and Budget Robert Brown, who had been her supervisor and also a member of MMS' SES, readily made himself available to all within the organization regarding ethics issues.

Denett

Denett attended annual ethics training for SES employees provided by DOI's Ethics Office that was specifically tailored to SES employees and covered conflict-of-interest laws and post-employment laws in 2002 and 2003. The training she attended in 2002 occurred on September 18, 2002, 3 months prior to her asking Mayberry to draft the Statement of Work for the initial FBS contract. During her interview, Denett confirmed that she regularly attended annual ethics training as a DOI SES employee.

Investigators informed Simmons that after Denett's efforts to find a way to bring Mayberry back to MMS as a retired annuitant or an 8a contractor had failed, she asked Mayberry to write the Statement of Work for a competitive contract for consulting services that Mayberry ultimately bid on and won. When asked if she believed this to be proper, Simmons stated, "No." She elaborated by stating, "[Y]ou should not be negotiating for your next job while still in this job and having it tied to what you are doing." Simmons stated that she would have advised Denett that her request to Mayberry to prepare the Statement of Work would violate standards of conduct that prohibited the favorable treatment of one individual over another by providing them

with an unfair advantage. Simmons indicated that she had no contact with Denett regarding this matter.

Investigators also informed Simmons that Denett had asked Dial to draft the Key Qualifications for the solicitation, to serve on the TPEC and later become the COTR for the contract, even though he was a close friend and associate of Mayberry's. Investigators then informed Simmons that, subsequent to Dial drafting the Key Qualifications and Denett forwarding the Key Qualifications to the contracting officer, Denett acknowledged that she may have sent the Key Qualifications to Mayberry 2 weeks prior to the solicitation being publicly announced. Simmons said these actions were absolutely not appropriate.

Simmons also stated that if Denett had asked for advice regarding whether it was appropriate to serve on the TPEC, Simmons would have advised Denett that it would be improper to do so because of the appearance of favoritism and a lack of objectivity. Simmons also pointed out that Denett's mere presence on the TPEC could give the appearance of influence over the other TPEC members, whether real or not, inasmuch as the other members were Denett's subordinates (Dial and Hamilton both reported directly to Denett).

Investigators provided Gary and Woods with the entire set of circumstances identified in this investigation that led up to Denett asking Mayberry to draft the Statement of Work for the contract Mayberry subsequently competed for. In response to this information, Woods said, "Oh boy, this is ugly." When asked if he believed this to be proper, Gary indicated that it was not by stating, "[Y]ou don't even need an ethics officer for that [answer]."

When investigators asked Gary if Denett sought ethics advice or guidance from him related to the creation of the FBS contract, he replied that she had not. Woods expressed his surprise regarding the circumstances surrounding the creation of the initial FBS contract, including the fact that Denett had asked Mayberry to draft the Statement of Work for his own contract.

Investigators asked Woods if it would be proper for Denett to send Mayberry the Key Qualifications 2 weeks prior to the solicitation being issued to the public. He responded by stating the following:

> If you look at the [Federal Acquisition Regulations], it talks about the contracting officer's primary responsibility is to maintain a level playing field. There are many [Government Accountability Office] decisions that try to shed some light on what that means, but essentially sending the evaluation criteria to one of the offerors before he submits a proposal and before the other offerors are involved in the process is clearly not a level playing field – the fix is in throughout – this is tainted from the beginning – that is totally improper. This guy is walking into the room with a clear advantage over the other offerors that the government has given him. This stinks, it's just crazy.

Investigators informed Woods that Denett assigned herself, along with Dial, to serve on the TPEC that rated the competitors for the contract solicitation, including their close friend and colleague, Mayberry. In response, Woods stated that if Denett had asked for his advice

regarding whether she should serve on the TPEC, he would have advised her, based upon her close relationship with Mayberry, that it would be improper for her to do so.

Investigators then asked Woods, overall, what advice he would have provided to Denett if she had come to him regarding the creation of this contract. In response, Woods stated the following:

> I am a little stunned because we are supposed to, from the government side, to maintain the integrity of the procurement process, and what troubles me is that the fix appeared to be in. You draft the SOW – wink, wink – we are going to give you the contract – that kind of thing. It is not only a violation of the basic premise of keeping a level playing field for procurements but it also really means that other vendors who may want to bid on a particular contract have no chance – we are leading them down the primrose path where there is no realistic chance that they are going to be able to, or have a legitimate opportunity to get a particular contract.

Robert Brown said he had been MMS' Associate Director of Administration and Budget since 1995. As the Associate Director for the Administration and Budget division, Brown oversaw both MMS' procurement division and ethics office.

Investigators informed Brown of the entire set of circumstances that led to Mayberry's drafting of the Statement of Work for his own contract. In response, Brown said, "I would not recommend that at all." When asked why he would not recommend Mayberry to draft the Statement of Work, Brown stated the following:

> Clearly, you don't want to have even that appearance that there is preference in these kinds of things. In this case you got more than an appearance in the sense that you get to write the solicitation and then respond to the solicitation you have an advantage that is probably untoward.

Brown stated that, from the very beginning, Denett should have informed the contracting officer that she wanted to bring back a specific person and then listened to the contracting officer's advice as to what their legal options to do so would be. Brown explained that at every stage thereafter, the contracting officer should have been kept informed of all pertinent facts surrounding the process (i.e. persons involved, their relationships, etc.) so that the contracting officer would have been capable of assuring the process remained in compliance with the law. Brown added that, with respect to the FBS contracting process, in addition to the need to engage the contracting officer, the ethics officer should also have been actively engaged. Specifically, he stated the following:

> The contracting officer and ethics officer can't be effective unless you tell them the entire situation – you tell them 'I'm this, I'm that' and so on – what should I do? That's what they are there for. But if you don't tell them that, then they can't give you effective advice.

Brown further stated that the MMS procurement chief and ethics officer were responsible for explaining to MMS employees "the four corners, factually, without any reservations about what it is that you want to do, and they will tell you whether you can or cannot do it." He stated that, regarding ethics laws, if an MMS employee described all of the facts to the ethics officer and the ethics officer told the employee that it was legal to take a specific action and it turned out to be illegal, the employee would be protected from prosecution. Therefore, Brown stated that he always told an employee to go to the ethics office if they had a question about what was legal or not.

Regarding Denett's request to have Mayberry draft the justification necessary to seek a modification that would increase the funding for Mayberry's FBS contract, which resulted in Dial immediately joining FBS once the modification was signed, investigators asked Brown if he believed this was proper. Brown responded by stating that it "depends on the environment you are in." He stated that if the modification represented an increase in funding because there was a highly technical change in the contract, then it would make sense to request the contractor to draft an explanation that supported the need for increased funding. However, with respect to the modification for the FBS contract where more hours were simply being added to the contract, Brown stated, "I would probably have someone on my staff do that – that's what I would do."

Agent's Note: *According to Section 9.505-2(a)(1) of the Federal Acquisition Regulations (FAR), "if a contractor prepares and furnishes complete specifications covering non-developmental items [e.g. drafts the Statement of Work], to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract."*

Mayberry

Mayberry attended annual ethics training provided by MMS' Ethics Office in 2000, 2001, and 2002, including training on November 25, 2002, approximately 2 weeks prior to drafting the Statement of Work for his own contract. All MMS employees were required to attend annual ethics training which covered a full range of ethical issues, including conflict of interest laws and post-employment laws. During his interview, Mayberry confirmed that he received annual ethics training.

Neither Simmons nor Seidel recalled being consulted by Mayberry for ethics guidance prior to or after Mayberry's retirement in January 2003. Simmons stated that she had checked her work logs and did not find Mayberry's name in any of her logbooks.

Investigators asked Simmons what she would have advised Mayberry to do if he had asked her whether he could draft the Statement of Work. Simmons responded that she would have told Mayberry he could not legally do so. She explained that Mayberry's drafting of the Statement of Work fell within the restrictions outlined in 18 USC §208 because he had a personal financial interest in creating a contract for himself. She summarized her thoughts by saying, "[Y]ou shouldn't be sitting in your federal chair negotiating your own contract to come back."

Investigators asked Simmons, given the executive level of Mayberry and his years of experience working for the federal government, whether she believed he possessed enough training to know when he needed to seek clarification if confused about ethics laws. She responded by saying, "[T]he whole way the ethics rules work is that the onus is on the employee to understand what the rules are and to seek advice if they don't understand what the rules are." Simmons noted that this was especially true for Mayberry, in light of his executive status and his length of federal service.

When investigators asked Gary if Mayberry ever sought ethics advice or guidance from him prior to, or after, Mayberry's retirement in January 2003, Gary responded by stating that Mayberry's name "does not ring any bells whatsoever." Gary stated that he had checked his work logs and did not find Mayberry's name in any of his log books.

Investigators asked Gary what he would have advised Mayberry to do if Mayberry asked for advice regarding whether he (Mayberry) could draft the Statement of Work. Gary responded by saying, "[T]hat would be real easy – it would have been no." He elaborated by stating that Mayberry's drafting of the Statement of Work was probably both a FAR violation and a violation of ethic laws.

According to Gary, there were many authorities in place that provided flexibility in re-hiring employees with institutional knowledge back to federal service, yet he stated that this situation appeared to be one where there was a "manipulation of the contracting process to avoid someone's personal preference not to come back as a re-employed annuitant, or not to be re-hired, or whatever."

Investigators also asked Brown if he believed Mayberry should have known better. Brown responded by stating that Mayberry was a long-time federal employee at a high-level position who attended trainings "and all those kinds of things – yeah, [he] should have known better."

Dial

Dial attended annual ethics training from MMS' Ethics Office in 2000, 2001, 2002, and 2003, including training provided by the DOI Ethics Office on May 8, 2003, that was specifically tailored toward SES employees and covered conflict of interest laws and post-employment laws. During his interview, Dial confirmed that he regularly attended annual ethics training while employed with MMS; however, he also stated that he did not recall having any discussions with any ethics officials within DOI or MMS relative to post-employment laws that would have applied to his situation.

Dial said he served as the COTR for the original FBS contract for 1.5 years until he retired from MMS in September 2004. Dial started working for FBS on the very same contract 6 months after he retired.

Former MMS Ethics Specialist Seidel stated that to the best of her knowledge, she could not recall Dial ever coming to her for post-retirement ethics guidance.

Seidel stated that regarding retirement and technical questions, the MMS Ethics Office was able to provide an overall view of what the regulatory requirements were; however, when it came to specifics, she noted that the MMS Ethics Office would engage the support of the DOI Ethics Office within the SOL. Seidel stated that she would have remembered going to the DOI Ethics Office for issues brought to her by Dial and that circumstance never occurred. In addition, Seidel stated that when an employee came to her office, she would routinely have them write down what their specific issues with post-employment were. She reiterated that she did not recall Dial ever doing so.

After being provided a copy of the January 21, 2004 e-mail Dial forwarded to Mayberry that contained "guidance on Post Employment Restrictions for Senior Executives developed by the Department's Ethics Office," Seidel stated that based on the information provided to her, it was apparent that Dial read the memo regarding post-employment restrictions, signed it, and then ignored it.

Investigators also informed Simmons that Dial served as the COTR for the FBS contract for 1.5 years until he retired from MMS in September 2004 and began working for FBS on the very same contract. In response to these facts, Simmons stated that Dial's representation of FBS probably violated 18 USC §207(a) (1), (a)(2), and (c). When asked if Dial ever consulted her about post-employment issues, Simmons stated that she did not recall Dial ever asking her for any ethics advice.

Investigators asked Simmons if she believed Dial had an obligation to seek clarification if he was confused about how 18 USC §207 might have applied to him. Simmons stated that she personally conducted annual ethics training for DOI SES employees and she regularly urged SES employees to seek such clarification.

Simmons pointed out that given the level of Dial's SES status and years of experience working for the federal government, she believed he possessed enough training to know when and how to seek clarification if confused about ethics laws. When investigators informed Simmons that Dial claimed to be confused about 18 USC §207, she replied, "[I]t strikes me that if he is already giving you the answer that he was confused, then it is sort of suggesting that he didn't want to be not confused."

Investigators also informed SOL attorneys Gary and Woods that, after Dial served as the COTR on the FBS contract for 1.5 years until he retired from MMS in September 2004, he began working for FBS on the very same contract. In response, Gary stated that if Dial represented Mayberry's company to MMS under the contract, then that is "a 207 [18 USC §207] issue."

Investigators then asked Gary if he believed Dial had an obligation to seek clarification if he was confused about how 18 USC §207 might have applied to him. Gary stated that the DOI Ethics Office regularly urged SES employees to seek such clarification in their annual ethics training. When told that Dial claimed that he was confused about 18 USC §207 and then never sought further clarification, Gary stated, "That's crazy."

Gary explained that the DOI Ethics Office was very conversant with 18 USC §207 and, when they were conducting annual ethics training for SES employees, they always made a point of talking about post-employment laws/restrictions. He stated that the DOI Ethics Office informed the SES employees to "make sure you come and get ethics advice when you are contemplating leaving the government, especially if you are going to do something related to your job." Gary further stated that the SES employees were also told to contact the DOI Ethics Office after they retired because the office was responsible for advising former employees about these laws.

Investigators then asked Gary, based upon those facts, if he considered Dial's actions to be "willful ignorance." Gary responded, "I sure would – if I had to opine about it." He explained, "It's hard for me to imagine, like Alton [Woods], that sitting down and doing what they were doing didn't trigger some kind of – wait a minute, is this really on the up an up? Should we be doing this? Should we be knitting together such a cozy relationship?"

Termination of Second FBS Contract

In a follow-up interview with MMS Chief Procurement Officer Eckl on June 25, 2007, investigators informed Eckl of all the circumstances surrounding the creation and modification of the initial FBS contract, revealed during the OIG investigation. During this interview, investigators also told Eckl that Dial began working for FBS in March 2005 and that the Statement of Work and Key Qualifications used in the second solicitation announced in October 2005 had not essentially changed since the original solicitation in 2003. Investigators informed Eckl that this situation resulted in the two persons responsible for drafting the Statement of Work and the Key Qualifications (Mayberry and Dial, respectively), which were utilized in the October 2005 solicitation, were now bidding on a competitive solicitation that they personally drafted. Given these facts, investigators then asked Eckl whether he thought the 2005 solicitation was a "fair" procurement process. Eckl responded by saying, "[O]bviously, knowing what I know now, I've got some major, major concerns with that." Eckl stated that he believed the procurement division did not know about these facts at the time the second contract was awarded to FBS.

Investigators then asked Eckl what action, if any, he planned on taking with respect to the current FBS contract, based upon the facts provided to him during his interview. Eckl replied, "I think in light of everything we know, we need to terminate it." Eckl further said he felt comfortable that this was the only correct course of action for the procurement division. He said, "I take this stuff very, very seriously, and I mentioned to you before that it bothers me to even be remotely associated with it, and we will do everything we can to make sure it doesn't happen again."

On June 29, 2007, investigators interviewed MMS Acting Director Walter Cruickshank and informed him of the circumstances surrounding the FBS contracts. Cruickshank stated that Mayberry should have been "walled off" from the preparation of the solicitation once Denett had decided to create the contract. Cruickshank also stated that, given the timing of everything, Denett should not have spoken to Dial about the possibility of him working for FBS in the future prior to asking Dial to draft the Key Qualifications for the contract. Based upon this fact, Cruickshank stated that he believed Dial's drafting of the Key Qualifications was a "big

problem" inasmuch as it would appear that he was considering his own future employment when doing so.

When specifically asked his opinion about Denett's possible forwarding of the Key Qualifications to Mayberry 2 weeks prior to the public announcement of the solicitation, Cruickshank said, "That's beyond the pale, I mean, you don't give a competitor insider information before the competition."

Cruickshank then stated that he felt it was improper for Denett to assign herself as a member of the TPEC because "she had clearly indicated through prior communications that she has some potential bias in selection" and that he didn't "know of too many occasions of an Associate Director sitting on a TPEC." Regarding Dial's assignment to the TPEC by Denett, Cruickshank stated that Dial would normally be an appropriate choice for such an assignment; however, given the fact that Dial and Denett may have discussed the possibility of Dial working for FBS some day in the future, it was not appropriate for Dial to serve on the TPEC.

Regarding the modification Denett sought to increase the funding of the FBS contract, Cruickshank said, "It seems clear what the purpose was for doing all that was to create the conditions for Milt [Dial] to join that contract and get paid and it looks like they're saying 'how can we do this the way that's the easiest to get it done?'" Cruickshank added, "It is not something I would do."

Regarding Mayberry's drafting of the justification to increase the funding for his own contract, Cruickshank stated that "the justification should have come from within MRM." With respect to the fact that Dial started working for FBS 6 days after the modification was signed, Cruickshank said, "That gives the appearance that he had been thinking about it before he left MMS."

Investigators then asked Cruickshank whether he believed it was appropriate for Denett to assign herself to the TPEC for the second FBS contract solicitation. He replied, "Given all this background, it is clear there was an interest in who the winner would be." Cruickshank stated that he knew post-employment laws existed, yet he was unfamiliar with the details of such laws. He did acknowledge that post-employment laws were covered in the annual ethics training provided to all DOI SES employees.

Investigators then apprised Cruickshank of Eckl's statement that he planned on terminating the current FBS contract after the investigators presented him with the above-noted circumstances surrounding the contract. In response, Cruickshank stated that he had "no problem with [Eckl] terminating the contract."

On July 26, 2007, the MMS Procurement Office terminated the second FBS contract.

Potential Losses of Competing Companies

Between July 17, 2007, and August 24, 2007, investigators contacted the six separate companies that submitted losing Best and Final Offers (proposals) to the MMS Request for Proposals (RFP) that resulted in both FBS contracts awarded in 2003 and 2005. Each company was asked to

provide an estimate of its costs related to the preparation and submission of proposals to MMS, along with a statement as to the size of the companies at the time they submitted their proposals.

The following is a summary of the response received from the six separate companies:

2003 MMS RFP

1) Sidebar Consulting
   Cost for Proposal: "In excess of" $20,000
   Size of Company in 2003: Approximate revenue of $80,000

2) High Performance Technologies, Inc.
   Cost for Proposal: Approximately $10,000
   Size of Company in 2003: Approximate revenue of $35 million

3) Jupiter Technical, Security, and Management Solutions
   Cost for Proposal: Approximately $20,000
   Size of Company in 2003: Unknown

2005 MMS RFP

1) Sebenza, LLC
   Cost for Proposal: "A minimum of" $20,000
   Size of Company in 2005: 6 – 8 employees

2) Sterling Heritage Consulting
   Cost for Proposal: $14,988
   Size of Company in 2005: Annual revenue of $1,033,447

3) Nwabukwu, Limerick & Associates, CPA's, LLC
   Cost for Proposal: Approximately $7,000
   Size of Company in 2005: Annual revenues under $6.5 million

In sum, the total lost cost for all six proposals was in excess of $91,988. ***Agent's Note:*** *Several letters proffered by the companies also described significant intangible costs associated with the preparation of their proposals, such as lost opportunity costs.*

On October 5, 2007, investigators interviewed Dial under a proffer agreement by the OIG and the Department of Justice Dial failed to offer any substantive information during this proffer that was not already covered above.