



Homeland Security

January 5, 2022

MEMORANDUM FOR: Randolph D. Alles
Acting Undersecretary for Management

FROM: Erica Dornburg **ERICA M DORNBURG**
Associate General Counsel, Ethics and Compliance Law

SUBJECT: Limited Authorization Under 5 C.F.R. 2635.502 for Mr. Eric Hysen to Participate in DHS's New Task Order with Accenture Federal Services, LLC

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Date: 2022.01.05 07:01:53 -05'00'

Purpose

The purpose of this memorandum is to advise you, as agency designee under 5 C.F.R. § 2635.502, about the criteria for issuing a written authorization to Mr. Eric Hysen to participate in DHS activities related to Task Order 70T01021F7663N012, between the U.S. Transportation Security Administration (TSA) and Accenture Federal Services. You indicate that you need Mr. Hysen to review work products and provide strategic feedback on the work performed under the above-referenced task order, which will be issued as part of the Secretary's initiative to improve employee morale and engagement.

Background

As part of the Secretary's ongoing effort to improve employee morale and engagement, DHS expects to sign a new task order under the Accenture Federal Services contract with TSA, Contract HSTS01-16-D-HRM037. The Task Order, valued at \$1,002,530, with completion expected by Feb. 28, 2022, has two phases:

1. Learning and Piloting
 - a. Uncover the ground truth
 - b. Learn from best-in-class practitioners
 - c. Catalogue and review programs
 - d. Field test pilots
 - e. Redesign morale and engagement strategies
2. Design Integrated Morale and Engagement Strategy
 - a. Redesign an integrated strategy
 - b. Workforce composition
 - c. Women in law enforcement

Under the new task order, Accenture will conduct an internal evaluation of DHS component personnel morale and gather information to pilot best techniques for improving employee engagement and morale. Using its findings, Accenture will then redesign the overarching DHS Employee Morale and Engagement strategy for the entire DHS workforce. OCHCO will be the primary agency interface with the Accenture contractors.

Mr. Hysen is a senior political appointee, serving as the Chief Information Officer and acting Deputy Under Secretary for Management. His brother works as a software developer for Accenture. Given his seniority, Mr. Hysen executed a disqualification and screening arrangement which included an impartiality recusal related to Accenture due to his close personal relationship with his brother and the real potential that a reasonable person might question his impartiality.

Mr. Hysen's brother works exclusively on a contract with the Defense Logistics Agency. He has never done any work related to DHS and has not been involved with the task order or work associated with it.

Applicable Ethics Rules and Regulations

Acts Affecting a Personal Financial Interest, 18 U.S.C. § 208

Under 18 U.S.C § 208, an employee may not participate in a particular matter in which the employee or certain others specified in the statute have a financial interest, if the matter would have a direct and predictable effect on that financial interest, unless she has a written waiver or qualifies for a regulatory exemption.

I have reviewed Mr. Hysen's financial disclosure. He has no known financial ties with Accenture other than his brother's employment. As such, I have determined that 18 U.S.C. § 208 does not prohibit his participation.

Impartiality in Performing Official Duties; Personal and Business Relationships, 5 C.F.R. § 2635 Subpart E

U.S. Office of Government Ethics (OGE) regulations include provisions designed to ensure that employees take appropriate steps to avoid an appearance of loss of impartiality in the performance of their official duties. Under 5 C.F.R. § 2635.502(a), Mr. Hysen would be precluded from participating in a "particular matter involving specific parties" where he knows a person with whom he has a covered relationship is a party or represents a party. 5 C.F.R. § 2635.502(a) and (b)(1)(ii). He should also recuse himself where circumstances raise a question regarding his impartiality. 5 C.F.R. § 2635.502(a)(2).

In this instance, I consider Mr. Hysen has a covered relationship with his brother – a relative with whom he has a close personal relationship – or at least the potential appearance of a personal conflict. He must therefore consider the impartiality considerations of his participation in oversight and direction of the Task Order involving his brother's employer.

Determination by Agency Designee

Under 5 C.F.R 2635.502(d), the agency designee may authorize Mr. Hysen's participation in matters related to the task order based on a determination, made in light of all relevant circumstances, that the interest of the Government in his participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. You are the appropriate "agency designee" under DHS Management Directive 480.1, Ethics/Standards of Conduct (defines "agency designee" as "the first-line supervisor of the employee whose interests are at issue").

In this instance, given Mr. Hysen's senior political appointee roles, as well as the disqualification he implemented to avoid any potential for even an appearance of a conflict arising, he specifically recused himself.

In considering whether to issue an authorization, you should narrowly scope and document the authorization in writing in order to mitigate the risk to the employee and the Department that a reasonable person would question the employee's impartiality. Based on the information received from you, Mr. Hysen, and review of the Task Order, I have prepared a summary of the factors that you should carefully evaluate below.

(1) The nature of the relationship involved

Mr. Hysen has a close personal relationship with his brother. His brother works as a software developer for Accenture Federal Services. Under the applicable regulation, Mr. Hysen has a "covered relationship" with his brother – "a relative with whom [Mr. Hysen] has a close personal relationship." 5 C.F.R. § 2635.502(b)(ii). Given his senior role with DHS, to avoid even the appearance of impartiality, he also executed a disqualification related to Accenture to avoid even the potential for an appearance of a personal conflict. Therefore, Mr. Hysen is barred from working on a particular matter involving Accenture without authorization from the appropriate agency official. 5 C.F.R. § 2635.502(a).

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

Resolution of matters related to the task order with Accenture will have no financial impact on Mr. Hysen's brother's compensation or employment status with Accenture. Mr. Hysen's brother works on a contract with the Defense Logistics Agency, which is the only role he has ever held at Accenture; he has never done any work related to DHS. His brother has not been nor is he expected to be involved in the task order or the work associated with it.

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

Mr. Hysen will generally oversee the task order to ensure it meets the Secretary's priorities. This will include reviewing work products and providing "strategic feedback to ensure development and execution of an employee morale and engagement strategy aligned to the Secretary's priorities." He expects to be involved in meetings with vendor personnel but will not have any

involvement in negotiating or approving the financial terms or any other details of the task order. He will exercise some discretion in this role but will not be the primary agency interface with the Accenture contractors—that will be the Office of the Chief Human Capital Officer (OCHCO).

(4) The sensitivity of the matter;

This task order relates to the Secretary's stated priority on improving workforce morale, which the Secretary has described as being his "highest priority."

(5) The difficulty of reassigning the matter to another employee;

Mr. Hysen is a senior political leader, with many years of managerial and leadership experience, as well as subject matter technology expertise. He is uniquely positioned to oversee implementation of the task order, something other MGMT employees could not do as seamlessly or effectively.

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Mr. Hysen's role and expertise are crucial to the implementation of this task order, so adjustments to his duties in order to reduce or eliminate the likelihood that a reasonable person would question his impartiality do not appear to be feasible.

Conclusion

Mr. Hysen does not have a disqualifying financial conflict of interest under 18 U.S.C. 208 with Accenture. However, given his senior position and because he is a political appointee, he is more likely to face public scrutiny about his work on the task order, given his brother's employment with Accenture.

I recommend that you consider the factors discussed above when determining the appropriateness of an authorization, as well as its scope.

If you agree with the above discussion and analysis, you may issue the enclosed memorandum to Mr. Hysen as written documentation of his authorization. You may also amend or revise it as you deem appropriate. I am at your disposal to assist or discuss.

Enclosure: as stated