



Date : November 28, 2006

Reply to

Attn of : Office of Inspector General (OIG)

Subject : OIG Report No. 07-03, Suitability Determination of Contract Employees

To : Allen Weinstein, Archivist of the United States

Enclosed is OIG Report No. 07-03, Suitability Determination of Contract Employees. The report contains one recommendation for formalizing policies and procedures for conducting and documenting contractor suitability determinations. Management's comments, dated November 9, 2006, on the draft report were taken into consideration when preparing this final report. Management's comments on the revised draft report were incorporated into the final report where appropriate.

In accordance with NARA 1201, your written response to the recommendation in this report is requested within 45 days. In your response please include milestones for implementing the recommendations, and the extent to which those milestones have been accomplished.

Should you have any questions regarding the report and recommendation, please call me or James Springs, Assistant Inspector General for Audits at (301) 837-3000.

Paul Brachfeld
Inspector General

Attachment

NOTE: *Portions of this Audit Report revealing privacy related information have been redacted due to their sensitivity.*

Office of Inspector General

**Suitability Determination
of Contract Employees**

Audit Report No: 07-03

November 28, 2006

Executive Summary:

In accordance with a request from the Archivist of the United States, the National Archives and Records Administration (NARA) Office of the Inspector General (OIG) conducted a review of suitability determinations for contract employees. The Archivist was concerned about the potential risk when contractors with felony criminal convictions were given access to NARA's permanent records. The review was conducted to determine the percentage of contractors hired by NARA who had felony convictions, and to examine NARA's process for determining contractor employment suitability. Suitability refers to a person's character, reputation, trustworthiness, and fitness to perform the job for which they are hired.

To accomplish this review we selected a sample of 177 suitability files for contractors assigned to Archives I and Archives II. As a result of our review and analysis, we identified that seven percent¹ of the contractors whose files we reviewed contained documentation of prior felony arrests. (See Appendix A) Likewise, our review revealed that controls over the suitability determination process itself require improvement. The existing procedures for conducting suitability determinations within NARA need to be formalized. Similarly, contractor suitability determinations are inadequately documented. These aforementioned conditions have resulted in NARA hiring individuals that may not have been hired if NARA had a formalized and stringent suitability policy. The lack of such a policy potentially places NARA employees and records at undue risk.

Implementation guidance for Homeland Security Presidential Directive (HSPD) – 12, requires that contractors within NARA be subjected to the National Agency Check with Written Inquiries (NACI) or other suitability or national security investigation prior to receiving a permanent identification badge. NARA utilizes criteria contained in 5 CFR 731 to make suitability determinations for contract employees. These federal regulations allow for persons with criminal convictions to be hired for federal employment when certain factors are considered. Additionally, NARA participates in a program – the Department of Veterans Affairs Compensated Work Therapy Program (CWT) – that allows employees with criminal histories to work in NARA facilities. The program serves as a vehicle for enabling veterans to return to productive independent living and continued sobriety.

NARA managers stated they want to continue utilizing the CWT Program because the program aids them in hiring personnel for demanding and hard-to-fill positions. Managers believe their programs would suffer if they could not hire CWT participants. CWT participants work primarily in the stack areas conducting accessioning and disposal activities that require movement of records center boxes. NARA managers also indicated that they had problems hiring people to do this type of work because of the low government pay rate. NARA managers further stated that CWT participants are good, hard-working employees trying to rehabilitate their

¹ The seven percent represents felony arrests because the suitability files reviewed did not always document whether there was a conviction.

lives and are among the best in the NARA workforce. Since managers would like to continue utilizing the CWT Program it is important to ensure that the suitability review process is adequately performed to vet out contractors who should either not be allowed to work in NARA facilities or have their access rights limited based upon suitability risk factors.

To address the reported weakness, this report contains one recommendation that, upon adoption, will help ensure that controls over NARA's suitability program are sufficient to protect NARA employees and records.

Background:

Homeland Security Presidential Directive (HSPD) – 12, signed by President Bush on August 27, 2004, directed the promulgation of a Federal standard for secure and reliable forms of identification for Federal employees and contractors. The implementation guidance for HSPD – 12, effective August 5, 2005, required that all new employees, contractors and other applicable individuals within NARA be subjected to the National Agency Check with Written Inquiries (NACI) or other suitability or national security investigation prior to receiving a permanent identification badge. A NACI consists of searches of Office of Personnel Management and Department of Defense investigations indices, the Federal Bureau of Investigations name and fingerprint files, and searches of records covering specific areas of a person's background during the previous five years.

5 CFR 731 establishes the criteria and procedures for making suitability determinations for Federal employment. Suitability is an employment requirement that incorporates an individual's character, reputation, trustworthiness, and fitness as related to a service standard. The service standard refers to the level of conduct necessary for a person to effectively carry out their duties as a Federal employee. Conduct, or its after effect, that interferes, or leads one to believe it would interfere with an individual's ability to carry out the duties and responsibilities of a position in an efficient way, or with the employing agency's ability to complete its mission falls below the service standard.

NARA's Security Management Branch (NASS) of the Space and Security Management Division (NAS) is responsible for:

- formulation and execution of NARA's personnel security policy;
- oversight of position risk determinations for sensitivity and access requirements;
- collecting information for background investigations,
- making suitability and security clearance determinations;
- granting security clearances; and
- maintaining records of clearances granted by NARA and other Federal agencies.

NASS currently has eight employees that conduct contractor and employee suitability determinations for NARA nationwide.

When a contractor is hired at NARA they are required to complete a Declaration for Federal Employment (OF 306) and the Questionnaire for Non-Sensitive Positions (SF 85). These forms are used to gather information that demonstrates whether an applicant is reliable, trustworthy, and of good conduct and character. NASS staff members review the forms and submit them to the Office of Personnel Management (OPM). Once OPM receives the forms they conduct a National Agency Check with Written Inquiries (NACI) and return the completed NACI to NASS. NASS then

determines if the applicant is suitable for Federal employment by utilizing criteria contained in 5 CFR 731 § 202. According to the criteria an individual may be considered unsuitable for employment based on the following:

1. Misconduct or negligence in employment;
2. Criminal or dishonest conduct;
3. Material, intentional false statement or deception or fraud in examinations or appointment;
4. Refusal to furnish testimony as required;
5. Alcohol abuse of a nature and duration which suggests that the applicant would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;
6. Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;
7. Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force; and
8. Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

Furthermore, the following should be considered to the extent they are pertinent to the individual case:

1. Nature of the position for which the person is applying or which the person is employed;
2. Nature and seriousness of the conduct;
3. Circumstances surrounding the conduct;
4. Recency of the conduct;
5. Age of the person involved at the time of the conduct;
6. Contributing societal conditions; and
7. Absence or presence of rehabilitation or efforts toward rehabilitation.

Once NASS staff members determine whether an individual is suitable or not, they communicate the results of their analysis to the individual if the individual is found suitable. If the individual is found not suitable the Contracting Officers Technical Representative (COTR) is notified by NASS to remove the person from the contract. The COTR is then responsible for remitting the employees temporary badge/access card, parking permit and keys to NASS. NASS will then deactivate the temporary badge/access card.

While NARA staff utilizes the criteria from 5 CFR 731 to determine if contractors are suitable for Federal employment the Agency also participates in a program – the Department of Veterans Affairs Compensated Work Therapy Program (CWT) – that allows employees with criminal histories to work in NARA facilities. The program serves as a vehicle for enabling veterans to return to productive independent living and continued sobriety. The program provides a structured environment where participates work in vocational rehabilitation activities. The

program strives to improve the quality of life for veterans in at least four major areas:

- Clean and sober living and/or stability in mental health status,
- Productivity in the community,
- Living in stable, independent, housing, and
- Minimizing the reliance on institutional care.

Program participants must also be medically stable and have a goal of competitive employment.

Objective, Scope, and Methodology:

The overall objective of this project was to determine the percentage of contractors hired at NARA with felony convictions² and to examine NARA’s process for determining contractor employment suitability. The review was conducted at Archives II in College Park, MD, and Archives I in Washington, DC, within the Office of the Assistant Archivist for Administration (NA) and the Office of Records Services – Washington, DC (NW). Discussions were also held with Washington National Records Center staff in Suitland, Maryland.

To accomplish our objectives we reviewed OPM and draft NARA guidance pertaining to suitability determinations. We held discussions with NARA officials and reviewed suitability documentation (suitability files) to determine if they were processed in accordance with appropriate procedures. The suitability files reviewed were judgmentally selected from NASS contractor files. The chart below shows the number of files reviewed by location. The assessment was performed in accordance with Generally Accepted Government Auditing Standards.

Suitability Determination Files Reviewed by Location		
Location	Number of Files Reviewed	Number of Contractors³ Reviewed
Archives I	131	38
Archives II	46	6
Totals	177	44

² The review focused on felony arrests because the suitability files reviewed did not always document whether there was a conviction.

³ The number of contractors reviewed is less than the number of files reviewed because we reviewed multiple suitability files from a given contractor.

Finding:

NARA lacks an adequate internal control mechanism to ensure that the suitability determination process for contractors is performed in a consistent and well documented manner. The cognizant entity within NARA, NASS has not established formal policies and procedures for conducting and documenting suitability determinations. Title 5 CFR 731 establishes the criteria and procedures for making suitability determinations for Federal employment. HSPD-12 requires suitability determinations be made for contractors. Ineffective internal control over suitability determinations has occurred because NARA management has not ensured that adequate controls were established and functioning properly. The Government Accountability Office's, "Standards for Internal Control in the Federal Government," states that internal control serves as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. Inadequate policy and procedures and suitability documentation has lead to the hiring of individuals by NARA who may not be suitable for employment with the government. This condition places NARA's records and employees at risk.

Procedures for Determining Contractor Suitability Need to be Formalized

HSPD-12 implementation guidance requires that contractors be subjected to background investigation requirements such as the National Agency Check with Written Inquires (NACI) or other OPM or national security community investigation processes to determine suitability. OPM has published suitability regulations in 5 CFR 731. These regulations are designed to ensure that individuals hired by the Federal government or working for government contractors meet certain standards of character, reputation, trustworthiness, and fitness for employment. OPM has delegated to the heads of agencies limited authority for adjudicating suitability. NARA has no written guidelines implementing the suitability regulations. NASS has drafted a version of the guidelines but they have not been submitted to NARA's Office of Policy and Planning Staff (NPOL) for preliminary review and distribution for the formal clearance process.

The NASS staff responsible for writing the aforementioned suitability guidelines stated that drafting the guidelines is on her list of things to do but she has not had the opportunity to work on them because of competing priorities. The staff member also added that the draft policy does not meet the requirements of NARA 111, NARA Directives, which requires that directives be written in question and answer format. Requirements of HSPD-12 also must be incorporated into the implementing policy. HSPD-12 requires that contractors be subjected to the same background investigation and suitability determinations required for Federal employees.

The lack of a formal mechanism to be used in conducting suitability determinations could have had an adverse impact upon NARA. For example, based on a referral to the OIG, a contractor at Archives I was found to have marijuana in his onsite locker and was subsequently removed from duty. This contractor was the [Redacted: b6] for a group of employees contracted to relocate records throughout Archives I. Duties consistent with his job provided this individual unencumbered access to many of NARA's most valuable records. OIG conducted a review of this person's suitability file that revealed a felony conviction for possession of cocaine with intent to distribute in April 2001. Yet, NASS had determined that this person was suitable to work as a contractor with NARA in January 2006. When we sought to determine the basis for this determination, we were told that because his felony conviction was older than three years he was deemed suitable for contract employment. Subsequently, another NASS staff member stated that if he had reviewed the file he would not have found this individual suitable for employment with NARA. This condition results from a lack of formal Agency suitability determination criteria. It also represents an opportunity where the process of making the suitability determinations can be strengthened.

Inadequate Documentation of Suitability Determinations

Management failed to ensure that decisions regarding suitability determinations were adequately documented. GAO's "Standards for Internal Control in the Government" requires that all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. It further requires that all documentation and records be properly managed and maintained. Without a clear audit trail, there is no documentation available to evaluate the rationale used by NASS staff when making suitability determinations.

To determine suitability, NASS staff members are to:

1. Receive completed Declarations for Federal Employment (OF 306) and Questionnaires for Non-Sensitive Positions (SF 85) prepared by the employee or contractor before they are hired at NARA;
2. Review the forms and submit them to the Office of Personnel Management (OPM);
3. Receive and review National Agency Check with Inquiries (NACI) conducted by OPM; and
4. Determine if the employee is suitable for Federal employment by utilizing criteria contained in 5 CFR 731 § 202.

While holding discussions with the Personnel Security Officer concerning documenting decisions the employee stated that NASS documents the tough reviews but documentation is not necessary for routine reviews. However, GAO's Standards for Internal Control in the Federal Government states that all transactions and significant events need to be clearly documented. The determination of

whether an individual is suitable for Federal employment should be considered a significant event and properly documented.

During the course of the review we sampled 177 contractor suitability files to assess the consistency and integrity of the suitability determination process. While reviewing the files, we could not find adequate documentation supporting the rationale used by NASS staff for finding individuals with criminal histories suitable for Government employment. Of particular note was the lack of documentation with regard to thirteen of the files which contained records of prior felony arrests. Twelve of these thirteen files did not document how the NASS staff arrived at the suitability determination which allowed all of the candidates to work in NARA facilities in the Washington, DC area.

One file showed that an individual had been arrested four times from 2002 to 2003 on charges of disorderly conduct, possession of alcohol by a minor, unlawful taking of a motor vehicle, and auto theft. The file did not contain any record of the disposition of the four charges, or of an NASS staff member contacting the individual. Nevertheless, an NASS staff member made a favorable suitability determination and the individual was employed at Archives.

In another example an individual was arrested twice in 1985 for robbery with a deadly weapon. The person was sentenced to nine years confinement. In September of 2004, the individual was arrested again for simple assault. There were no indications in the suitability files that the NASS staff member asked the individual for the disposition of the simple assault arrest. The file reviewed also did not include documentation that the NASS staff member considered the recency of the conduct or the nature and seriousness of the conduct when making the determination, yet the individual was found suitable to conduct contract work for NARA. In June of 2005 that individual was employed at Archives I as [Redacted: b6]

Recommendation:

The Assistant Archivist for Administration should work with the appropriate NARA offices to ensure that formal policies and procedures for conducting and documenting suitability determinations are developed and implemented.

Management Comment

Management concurred with the recommendation.

Analysis of Contractor Suitability Determinations By Location			
Location	Number of Files Reviewed	Number of Individuals with Felony Arrests	Percentage with Felony Arrests
Archives I	131	10	8%
Archives II	46	3	7%
Totals	177	13	7%