



**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF INSPECTOR GENERAL**

**INVESTIGATION OF ALLEGED MISCONDUCT DURING
NASA'S PROCUREMENT OF SPACE COMMUNICATIONS
NETWORK SERVICES**

INVESTIGATIVE SUMMARY

DECEMBER 9, 2010

I. BACKGROUND AND SUMMARY OF FINDINGS

This report summarizes a NASA Office of Inspector General (OIG) investigation into allegations of misconduct raised by Honeywell Technology Solutions, Inc. (Honeywell) relating to NASA's award of a \$1.26 billion contract to provide space communications services. Honeywell, which lost the contract to ITT Corporation, Advanced Engineering and Sciences Division (ITT), claims that Robert Spearing, a former NASA employee, violated federal laws by assisting ITT with its bid and that ITT suffered from an organizational conflict of interest that should have disqualified the company from participating in the procurement.

The backdrop for our investigation is NASA's 2008 solicitation for the Space Communications Network Services (SCNS) contract. The winning bidder for the SCNS contract will be responsible for supporting a wide range of communications with NASA's Earth-orbiting spacecraft, including the International Space Station (ISS), the Space Shuttle, the Hubble Space Telescope, and the Earth Observing System satellites.

For three decades, NASA has contracted with Honeywell for related but not identical space and near Earth network communications services. The most recent such contract – known as the Near Earth Network Services or NENS contract – was awarded to Honeywell in 2003. Under NENS, Honeywell was responsible for operating NASA's Space Network consisting of a fleet of tracking and data relay satellites in orbit around the Earth and associated ground network sites. While there are differences between the two contracts, NASA officials describe SCNS as the successor contract to NENS.¹

Honeywell and ITT were the two final bidders for the SCNS contract. Until August 2008, ITT held the Mission Services Program (MSP) contract with NASA through which it provided systems engineering and support to the Exploration and Space Communications Projects Division at Goddard Space Flight Center (Goddard). Under this contract, ITT worked on the Space Network with NASA, Honeywell, and other contractor personnel on projects performed under the NENS contract. As a result, a limited number of ITT personnel had access to a Honeywell database and other Honeywell documents related to Honeywell's work on the NENS contract.

On October 10, 2008, NASA awarded the SCNS contract to ITT. Honeywell contested NASA's decision and sought relief through various forums, including the OIG and the Government Accountability Office (GAO).² In its complaint to the OIG, Honeywell alleged that Spearing, NASA's former Deputy Associate Administrator for Space Communications and Navigation,

¹ The SCNS contract is an indefinite-delivery/indefinite-quantity contract with a basic period of performance of 5 years and 3 months. The contract also includes two 1-year options.

² Between October 2008 and August 2010, Honeywell filed six bid protests with the GAO, which has jurisdiction for determining whether NASA awarded the contract in violation of laws and regulations governing contracting with the federal government. The most recent protest was filed on August 30, 2010, after NASA again awarded the SCNS contract to ITT following a re-evaluation by NASA of ITT's past performance on the MSP contract. On September 16, 2010, the GAO dismissed this protest after NASA stated it would take corrective action to re-evaluate another aspect of ITT's past performance on a different contract. As of early December 2010, NASA had not made another award decision. Due to these protests, NASA has extended the NENS contract with Honeywell in 6-month intervals since October 2008. As of October 2010, NASA had paid Honeywell \$269 million in contract extensions.

was prohibited from assisting ITT with its SCNS bid proposal due to his former NASA employment, and that by doing so he may have violated the Procurement Integrity Act and federal ethics provisions relating to post-government employment. Honeywell also alleged that the SCNS award was tainted by an organizational conflict of interest as that term is defined in the Federal Acquisition Regulation (FAR).³ Specifically, Honeywell asserted that ITT gained an unfair advantage in the procurement process because ITT employees exercised oversight of Honeywell's performance on the NENS contract and had access to confidential Honeywell information.

Honeywell also raised its concerns with members of Congress. In July 2010, the Majority staff for the House Committee on Science and Technology issued a report examining whether ITT had an organizational conflict of interest that gave it an unfair advantage over Honeywell and whether NASA took appropriate steps to address this alleged conflict before awarding the contract to ITT. In its report, the Committee's Majority staff did not reach a definitive conclusion on whether an organizational conflict existed, but faulted NASA's handling of the issue and concluded based on this and other aspects of the procurement that the SCNS competition was "skewed in such a fashion that, at a minimum, creates the appearance of the agency favoring one bidder over another."⁴ NASA disputed the report's findings and defended its handling of the procurement in comments on a draft of the report prepared by the NASA Office of General Counsel.

Although our investigation reviewed issues related to Honeywell's organizational conflict of interest allegation, we did not attempt to resolve the broader issue of whether ITT had an organizational conflict of interest. As acknowledged in the House Committee's Majority staff report, this is a complex question of federal contracting law and one that in our view is best resolved by the GAO, which has statutory responsibility for deciding bid protests, or in a judicial forum such as the U.S. Court of Federal Claims. Rather, our investigation focused on the specific allegations that Honeywell raised to us concerning potential criminal and ethical violations by ITT personnel, including whether ITT personnel improperly accessed and used Honeywell proprietary data in preparing its SCNS bid.

During the course of our investigation, we conducted 67 interviews and examined more than 100,000 pages of documents and e-mails obtained from NASA, Honeywell, ITT, and other parties.

In sum, after evaluating the information gathered in the course of our investigation and consulting with the Department of Justice and the Office of Government Ethics, we found insufficient evidence to sustain Honeywell's allegations. Specifically, we found no evidence that Spearing violated federal laws relating to procurement practices or restrictions on his post-government employment. Nor did we uncover evidence that ITT personnel engaged in any criminal misconduct during the procurement or used Honeywell's proprietary information in

³ FAR Subpart 9.505-1 through 9.505-4.

⁴ "Fairness and Contracting Integrity in NASA's Space Communications Networks Services Competition: A report by the Majority staff of the Committee on Science and Technology to Chairman Bart Gordon, Committee on Science and Technology, and Chairman Brad Miller, Subcommittee on Investigations and Oversight" July 13, 2010. The report also examined how NASA graded certain periods of Honeywell's performance, an issue that Honeywell did not raise to the OIG.

preparing ITT's bid for the SCNS contract. Finally, although we did not seek to resolve Honeywell's bid protest based on its claim that ITT suffered from an organizational conflict of interest, we found that ITT employees did not evaluate Honeywell's performance on the NENS contract or help to create the requirements, specifications, or statements of work related to the SCNS contract. We also found that although some ITT employees had access to a Honeywell database and other documents containing information that Honeywell considered proprietary, it was not clear whether or how often these employees actually accessed this data or that any information they may have accessed was truly proprietary in nature.

II. HONEYWELL'S CLAIMS CONCERNING ROBERT SPEARING

As noted above, Honeywell's allegations largely focused on the actions of Spearing, who was hired in June 2007 shortly after his retirement from NASA to assist ITT in its bid for the SCNS project. Honeywell asserted that by acting in this capacity Spearing may have violated federal laws and regulations pertaining to post-government employment and procurement integrity.

A. Applicable Laws and Regulations

Federal laws and corresponding regulations restrict federal employees from taking certain actions on behalf of private entities when they leave federal service. Depending on an employee's duties and seniority during federal service, he or she is subject to a variety of post-government employment restrictions under "revolving door" prohibitions. Although these prohibitions differ in various respects, as a general matter they restrict the ability of former employees to appear before or otherwise communicate with their former government employers on behalf of other companies or individuals about certain matters or for specified periods of time. However, none of these laws completely prevent former federal employees from taking private-sector jobs that involve matters or issues on which they worked during their employment. Other laws prohibit employees and contractors from disclosing or attempting to obtain certain types of confidential business information prior to the award of a government contract. Below we summarize the provisions potentially applicable to the allegations in this case.

- **18 U.S.C. § 207(a)(1). Lifetime ban on making a communication or appearance involving particular matters involving a specific party.**

Under section 207(a)(1), former employees who were "personally and substantially" involved in a matter during the course of their employment may not knowingly make an appearance before or communicate with their former agencies on behalf of another person about that matter with the intent to influence the agency's decision-making process. This prohibition lasts throughout the employee's lifetime and applies to any matter in which the employee directly participated or in which a subordinate actually directed by the employee participated.

- **18 U.S.C. § 207(a)(2). Two-year restriction on particular matters involving a specific party when the matters were under the employee's official responsibility.**

Section 207(a)(2) is both broader and narrower than Section 207(a)(1). It is broader in that it prohibits communications and appearances before the employee's former government employer on behalf of another person with the intent to influence the agency about a matter when the

employee “knows or reasonably should know” that the matter was “pending under his official responsibility” during the last year of his government employment. It is narrower in that the ban remains in effect for only 2 years after the employee leaves government service.

- **18 U.S.C. § 207(c). One-year restriction on communications with an employee’s former agency.**

Under Section 207(c), employees who served in “senior positions” may not for 1 year after their service ends appear before or communicate with their former agency with the intent to influence the agency on behalf of another person seeking official action from the agency. Unlike the lifetime and 2-year bans discussed above, this 1-year “cooling off” provision does not require the former employee to have participated in the matter that is the subject of the communication or appearance.

- **The Procurement Integrity Act, 41 U.S.C. § 423.**

The Procurement Integrity Act applies to contracts with a value in excess of \$100,000. The Act prohibits current or former U.S. government employees or consultants from knowingly disclosing source selection information or contractor bid or proposal information before the award of a contract in a competitive federal agency procurement to which the information relates. The Act also prohibits a contractor, other business entity, or individual other than a U.S. government employee or consultant from knowingly attempting to obtain such bid or proposal or source selection information (other than its own information, information in the public domain, or information to which it is otherwise legally entitled) before award of the contract.

“Source selection information” is information not previously made available to the public prepared by any agency when evaluating a bid or proposal and includes:

- bid prices for sealed bids or lists or prices;
- source selection plans;
- technical evaluation plans;
- technical evaluations of competing proposals;
- competitive range determinations;
- rankings of bids, proposals, or competitors;
- cost or price evaluations;
- source selection board reports and evaluations;
- source selection advisory board recommendations;
- proposed costs or prices submitted; and
- any other information marked as “Source Selection Information.”

“Contractor bid or proposal information” is proprietary information that must be safeguarded to prevent inappropriate disclosure. This includes non-public information submitted to a federal agency in connection with a bid or proposal such as:

- cost or pricing data;
- indirect costs and direct labor rates;
- information about manufacturing processes, operations, and techniques when marked “proprietary” or “source selection information” in accordance with law or regulation;
- information marked as “contractor bid or proposal information”; and
- any other material or information related to a specific procurement that a company making a bid deems proprietary.

B. Facts

Spearing began his NASA career as a junior engineer in 1962. When he retired from NASA in April 2007, he was serving as NASA’s Deputy Associate Administrator for Space Communications and Navigation. Spearing had served in this Headquarters-based position since 1998 when he returned to NASA from a 10-year stint in the private sector.⁵

As Deputy Associate Administrator, Spearing provided leadership and executive program management for NASA’s Space Communications and Navigation Office and was the Agency’s highest official with direct management responsibility for space communications. According to documents on file with the NASA Office of General Counsel, Spearing’s duties included “establishment of top-level architecture, requirements and budgets, allocation of program and project responsibilities, selection of program executives, and periodic review of portfolio activities including research activities, and successful execution of the Space Communications program in support of NASA, national, and international space flight mission operations.”

The Exploration and Space Communications Projects Division at Goddard (known at NASA as Code 450) was the NASA office responsible for both the NENS contract and the SCNS procurement. While the Division fell within Spearing’s area of responsibility, according to both Spearing and various Code 450 managers we interviewed Spearing did not manage Code 450 on a day-to-day basis or have direct oversight of the Division’s contracts or contractors. The Deputy Assistant Director for Communications and Navigation in charge of Code 450 told the OIG that although Spearing received monthly status reports about Code 450’s activities, he was not involved in managing the NENS contract or any other contract developed or managed by Code 450 and had no involvement with the SCNS contracting process. Similarly, Spearing’s former Deputy told the OIG that Spearing had no substantive involvement in the management of the NENS contract or the development of the SCNS requirements and that NASA project

⁵ Between 1962 and 2007, Spearing left NASA for approximately 10 years to work in the private sector. From 1989 to 1991 he served as a vice president and account manager for Contel Federal Systems of Chantilly, Virginia, and from 1992 to 1998 he served as vice president and president of the Information Systems Division of Telos Corporation of Ashburn, Virginia.

managers and staff at Goddard were responsible for implementing the largest portion of the competitive acquisition tasks associated with the SCNS procurement.

In March 2007, shortly before Spearing retired from NASA, Code 450 released a Request for Information (RFI) seeking industry input into what would later become the SCNS procurement.⁶ According to both Spearing and the other NASA witnesses we interviewed, Spearing was aware that the NENS contract was ending and that a successor contract was in the offing. However, Spearing was not involved in the details of the RFI process and did not attend concept meetings regarding the SCNS solicitation. In addition, Spearing and these witnesses reported that the majority of the pre-bid preparation on the SCNS contract, such as putting together actual requirements, was not done until after Spearing had left NASA.

Spearing told the OIG that his decision to retire from NASA was primarily driven by family health care issues. He said that in the time leading up to his departure from NASA he had no plans to continue working after his retirement and therefore did not engage in a job search while still employed at NASA. Nevertheless, Spearing told us that shortly before he left NASA he received an exit briefing from an attorney in the NASA General Counsel's Office regarding his post-NASA employment responsibilities.

In May 2007, less than a month after he left NASA, Spearing said he received an e-mail from his "good friend and former boss" William F. Readdy, NASA's former Associate Administrator for Space Operations. In that e-mail, Readdy told Spearing that "if and when" he was ready to go back to work, Readdy had work for him at his management and consulting firm, Discovery Partners International, LLC. In June 2007, Spearing began work with Discovery Partners, which had been hired by ITT to assist it in competing for the SCNS contract. Spearing said he did not consult with or seek advice from NASA ethics officials before beginning his work at Discovery Partners on ITT's behalf.

According to Spearing, his first substantive work relating to the SCNS contract was a "Black Hat Review" meeting in July 2007 with 6-10 ITT representatives for the purpose of weighing ITT's strengths and weaknesses and those of the likely competition to determine whether ITT should bid on the contract. Spearing said that after this meeting he reviewed ITT's proposal materials and provided "strategic advice" to ITT concerning its bid materials and approach to the procurement. He told the OIG that he was not responsible for ITT's pricing decisions and that the advice he gave ITT was based on his generalized 40-plus years of experience in the public and private sectors.

ITT employees who helped put together the company's SCNS bid told the OIG that Spearing was a valued "senior level reviewer" on SCNS but was "not involved in the details the same way that ITT employees were." Further, ITT's statement of work provided that "Mr. Spearing will not represent ITT to market NASA" and described his duties as "providing advice on proposal

⁶ Under FAR Subpart 15.2, an RFI is used to exchange information to "improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award."

team formulation; providing technical advice on proposal win strategy development; and providing technical contribution to proposal development, including draft proposal evaluations.”

Under penalty of perjury, Spearing denied to the OIG that in the course of his work on the SCNS procurement he provided ITT with either confidential NASA data or proprietary data from Honeywell or any other NASA contractor.⁷ He said that he rarely had been exposed to proprietary data while serving as Deputy Associate Administrator and was not in possession of or aware of any proprietary Honeywell data at the time he advised ITT regarding the SCNS procurement. OIG interviews with NASA personnel confirmed that the majority of proprietary data associated with the NENS space communications contractors was maintained in a tightly controlled database at Goddard known as the Task Order Management System (TOMS).⁸ According to Goddard witnesses, NASA Headquarters personnel such as Spearing did not have access to TOMS. Spearing also denied calling any NASA personnel about the SCNS contract after he retired or having any formal or informal discussions with them about ITT’s proposal.

In addition to Spearing, the OIG interviewed relevant NASA decision makers on the SCNS contract, including the voting members of the panel that evaluated the SCNS bid proposals; William H. Gerstenmaier, the Associate Administrator for NASA’s Space Operations Mission Directorate and the selecting official for the SCNS contract; the Deputy Assistant Director responsible for Code 450 and other Code 450 employees involved in the SCNS procurement; and the Contracting Officer’s Technical Representative (COTR) and Contracting Officer for the NENS and SCNS contracts.⁹ All these witnesses reported that Spearing never contacted them regarding the SCNS contract on behalf of ITT.

Spearing told the OIG that based on a formal ethics opinion he received from the NASA Office of General Counsel in connection with a consulting relationship he began with a another private company in August 2007, he strongly believes that he acted in compliance with applicable ethics laws and regulations while serving as a consultant for ITT.¹⁰ OIG review of this opinion authored by a NASA ethics attorney shows that it correctly set forth the relevant post-government employment laws and analysis, including the prohibitions against communicating with the government found in 18 U.S.C. § 207 and the rules for source selection and bid information found in the Procurement Integrity Act. In pertinent part, Spearing’s declaration to the OIG stated:

⁷ Spearing’s statements to the OIG (and those of most ITT witnesses) were reduced to writing and signed pursuant to 28 U.S.C. § 1746, “Unsworn declarations under penalty of perjury” which, if violated, carries a possible felony criminal conviction and a sentence of up to 5 years in prison.

⁸ NASA defines TOMS as “[a]n application that provides the capabilities to process and manage any type of government task order contract from initiation by the Technical Representative to delivery of the product by the vendor.”

⁹ In general terms, the COTR is the government employee responsible for monitoring the contractor’s progress in fulfilling the technical requirements specified in the contract. The Contracting Officer is the government employee with authority to enter into, administer, or terminate contracts and make related determinations and findings on behalf of the government.

¹⁰ In August 2007, Spearing began work as a consultant for Harris Corporation. At the company’s request, Spearing obtained a post-employment opinion from NASA’s Office of General Counsel that concluded it was permissible for him to work for Harris.

I believe the work I was hired to do for ITT was permissible under the terms of the document and guidance received from NASA Neither ITT nor DPI [Discovery Partners] asked me to provide a NASA letter explicitly stating that my work for ITT was permissible (“safe harbor letter”). Because I understood the regulations provided by NASA, and because those regulations did not require such a letter, I did not seek one. Later, another contractor, Harris Corporation asked me to get a safe harbor letter. . . . The safe harbor letter [received from the NASA Office of General Counsel] did not cause me to question my work for ITT, but rather strengthened my conviction that I was operating within the bounds prescribed by the regulations. Additionally, the Statement of Work upon which my employment with ITT was based, explicitly stated that I was not to represent ITT to NASA, and I never did so.

As part of this investigation, the OIG interviewed Wayne Friedman, former Honeywell Vice President of Space Business. Friedman told us he was responsible for the NENS contract at Honeywell and that he attended meetings “every 2 or 3 months” at which he updated Spearing on Honeywell’s performance on the contract and discussed future plans. Friedman recounted a routine quarterly meeting with Spearing in March 2007 during which he said he recommended to Spearing that Honeywell continue handling NASA’s space communications networks under a “sole source” contract until the Space Shuttle Program ended. Friedman claimed that at this meeting he provided Spearing with a copy of a written presentation that outlined risk factors Honeywell believed NASA would face in future space communications efforts. Friedman characterized this presentation as “proprietary” and said that he believed Honeywell would suffer harm if the information in the presentation fell into the hands of a competitor. According to Friedman, Spearing’s response was to direct him to “Goddard” to find someone to “champion” his recommendation to sole source the contract. Spearing told the OIG he did not recall this meeting with Friedman, but said that because a number of companies were in a position to compete to provide the requested services, in his opinion a contract like NENS should never be sole-sourced.

We reviewed the document Friedman said he provided Spearing during this March 2007 meeting. The document was a 4-page PowerPoint presentation containing broad themes concerning Honeywell’s view that NASA should extend the NENS contract through the life of the Shuttle Program with Honeywell as the prime contractor rather than compete the contract. The document was not marked as proprietary and contained no information concerning pricing or cost data, labor rates, or any other information generally considered proprietary corporate data.

Friedman also told the OIG that he met Spearing at a December 2007 holiday party at Goddard where he and Spearing discussed the fact that Spearing was working with ITT on the SCNS procurement. Spearing said he briefly “ran into” Friedman on two occasions at the party, and confirmed that he and Friedman had discussed that he was assisting ITT with the SCNS procurement.

We subpoenaed records from ITT and Discovery Partners relative to the SCNS procurement and received thousands of pages in response. In addition, Spearing gave us consent to examine his

personal e-mail account.¹¹ We found no documents or e-mails in any of these sources indicating that Spearing had provided ITT with procurement sensitive information or communicated with NASA employees regarding the SCNS procurement.

To the contrary, the e-mails show that Spearing and his post-government employers took proactive steps to ensure their hiring of Spearing complied with federal post-government employment laws and regulations. In that regard, the e-mails reveal discussions about the scope of Spearing's government duties and legal boundaries relating to his post-government employment and statements by ITT that it would not hire Spearing if he fell into a prohibited category.

Finally, Honeywell asserted and we confirmed that Spearing's name appeared on PowerPoint slides prepared by ITT for an October 14, 2008, post-award briefing for Code 450 personnel. In addition, we confirmed that Spearing, as an independent consultant to NASA, served as the Chairperson on a 2008 Standing Review Board for the Tracking and Data Relay Satellites (TDRS) K/L, a contract awarded to Boeing Satellite Systems in December 2007 to replace two aging satellites in NASA's Space Network.¹² Spearing's participation on the Standing Review Board was approved by NASA's Office of General Counsel, and his participation occurred subsequent to SCNS proposals being received by NASA.

C. Analysis

We found no evidence to indicate that Spearing violated applicable laws or regulations in connection with his consulting work for ITT on the SCNS procurement. First, as discussed above, Section 207 does not impose a complete ban on Spearing working for ITT in connection with the SCNS bid or communicating with NASA employees. Rather, even if Spearing's responsibilities as Deputy Associate Administrator prior to his retirement from NASA could be equated with "personal and substantial" involvement on his part in the SCNS procurement, Section 207(a) only prohibited him from communicating with or appearing before NASA officials regarding SCNS on ITT's behalf. Similarly, assuming that the limited amount of work on the SCNS procurement completed by Code 450 prior to Spearing's retirement and its oversight of the NENS contract made the SCNS procurement a matter under Spearing's official responsibility during his last 2 years of NASA employment, Section 207(b) requires only that he not appear before or communicate with NASA regarding SCNS on ITT's behalf. Finally, assuming that Spearing qualified as a senior official, the 1-year cooling off provision contained in Section 207(c) prohibited only appearances or communications by him with NASA personnel with the intent to influence the Agency regarding a matter.

¹¹ Although Spearing's NASA e-mail account was no longer available for our inspection, we reviewed his personal e-mail account from AT&T that included 2,823 e-mails covering the period February 1, 2005, through February 20, 2009. Because we received these e-mails directly from the Internet Service Provider, there was no opportunity for editing or deletion.

¹² The Standing Review Board (SRB) is an Agency requirement defined in NASA Procedural Requirements (NPR) 7120.5D, "NASA Space Flight Program and Project Management Requirements." The SRB is the entity responsible for conducting independent reviews of the program/project per the life-cycle requirements. The SRB is advisory and is chartered to objectively assess the material presented by the program/project at a specific review. The SRB guidelines are outlined in a NASA SRB Handbook. See http://fpd.gsfc.nasa.gov/NPR71205D/SRB_Handbook.pdf

We uncovered no evidence to indicate that Spearing had meetings or communications with NASA employees on behalf of ITT regarding SCNS or, during the 1-year cooling off period, on behalf of any other individual regarding official NASA business. Spearing denied any such contacts or communications, none of the SCNS decision makers we interviewed reported any such meetings or communications, and we found no evidence of such meetings or communications in the thousands of documents we reviewed. OIG interviews corroborating this point included key procurement and contracting personnel associated with Code 450, members of the Source Evaluation Board who evaluated the SCNS bid proposals, and the NASA official who selected ITT as the winning bidder.

Although we confirmed that Spearing attended the 2007 Goddard holiday party and briefly discussed with Friedman his work for ITT, Friedman worked for Honeywell, not NASA. Moreover, nothing in Section 207 prevented Spearing from attending a social event at which his former colleagues were present. Similarly, neither having his name on two post-award briefing slides or participating on the Standing Review Board for the TDRS K and L satellite project constitutes prohibited communications under Section 207 because neither activity was undertaken on behalf of another person seeking official action from NASA. The briefing slides in question were part of a post-award presentation made by the ITT SCNS transition team in October 2008 to Goddard space communications personnel after ITT had already been awarded the SCNS contract. Spearing's name was mentioned on two slides in a 15-page presentation entitled "ITT SCNS Team Introduction to NASA/GSFC Code 450." Spearing was not present at the meeting, and the slides mentioned him as one of seven members of the "Transition Phase-In" team. With regard to the Standing Review Board, Spearing was hired by NASA to act on its behalf, not on the behalf of any individual or company.

Second, Honeywell did not produce, and we did not independently uncover, any evidence that Spearing violated the Procurement Integrity Act. In this regard, Honeywell suggested that prior to his retirement Spearing was "heavily involved in NASA's financial and strategic planning for the upcoming SCNS procurement." However, as discussed above, both Spearing and the other NASA employees we interviewed told us that prior to Spearing's retirement only preliminary work had been done on the SCNS procurement and that Spearing did not actively participate in that work. Moreover, the level of Spearing's involvement in the SCNS procurement prior to his retirement is in no way determinative of whether he violated the Procurement Integrity Act. In order to sustain such a violation, evidence must show that Spearing provided ITT with source selection, contractor bid, proposal information, or other information covered by the Act. However, Honeywell did not produce and we did not uncover any such evidence.

In sum, we found no evidence to sustain Honeywell's allegations that Spearing violated ethics or procurement laws or regulations in connection with assisting ITT with its SCNS bid.

III. ALLEGATIONS THAT MISCONDUCT BY ITT PERSONNEL RESULTED IN AN UNFAIR ADVANTAGE IN THE SCNS PROCUREMENT

In addition to its allegations regarding Spearing, Honeywell raised concerns about whether ITT gained an unfair advantage in the procurement process by virtue of its work on the MSP contract. Specifically, Honeywell asserted that several ITT employees, particularly Robert Chang, Vice President of Programs, Advanced Engineering and Sciences Division, and Ronna Brockdorff,

Vice President of NASA Program Management and System Support, had access to proprietary Honeywell information that gave ITT an unfair advantage in the SCNS procurement process. Honeywell claimed that for this and other reasons, ITT suffered from an organizational conflict of interest that made ITT ineligible for the SCNS contract.

As discussed above, Honeywell raised this organizational conflict of interest allegation with the GAO as one of the reasons NASA's award of the SCNS contract to ITT should be overturned. In January 2009, the GAO dismissed Honeywell's organizational conflict claim as untimely and therefore did not address the issue. In addition, the Majority staff for the House Committee on Science and Technology discussed aspects of Honeywell's organizational conflict of interest issue in its report, but did not reach a conclusion regarding whether an organizational conflict of interest existed.

Like the Majority staff, we will not substitute our judgment on this issue for that of the GAO, the entity in a position to address Honeywell's bid protests. Rather, we focused our investigation on whether ITT personnel committed misconduct by obtaining bid or source selection data in violation of the Procurement Integrity Act or engaged in other illegal activity such as mail or wire fraud or bid rigging in connection with the SCNS procurement. In the course of examining these issues, we also explored the extent to which ITT employees engaged in some of the kinds of conduct that form the underlying factual basis for Honeywell's organizational conflict of interest claim. We discuss our findings below.

A. Organizational Conflict of Interest Principles

As described by regulations and case law, organizational conflict of interest rules are designed to ensure that government contractors perform their duties in an impartial manner and to prevent unfair competitive advantage in the contracting process. There are three general categories of organizational conflicts: (1) impaired objectivity; (2) biased ground rules; and (3) unfair competitive advantage. Honeywell alleged that ITT suffered from all three types of conflicts with regard to the SCNS procurement.

First, Honeywell asserted that ITT had an impaired objectivity conflict because it exercised oversight of Honeywell's work on the NENS contract. Specifically, Honeywell claimed that ITT performed "systems engineering and technical direction" services for NASA under the MSP contract and therefore was in a position to skew the SCNS competition in ITT's favor.¹³ As defined by the FAR, technical direction is a combination of such functions as "developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies." According to Honeywell, as part of its duties under the MSP contract ITT made detailed observations of and evaluated Honeywell's performance, design approaches, and processes for NASA. Honeywell asserted that as a result ITT was in a position to influence Honeywell's performance evaluations on the NENS contract so as to favor ITT in the SCNS procurement.

¹³ FAR Subpart 9.505-1 states that a contractor that provides "systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, integration, assembly, checkout, or its production shall not be awarded a contract to supply the system or any of its major components or be a subcontractor or consultant to a supplier or any of its major components."

Second, Honeywell complained of biased ground rules based on the allegation that ITT created or helped to create the requirements, specifications, or statements of work for the SCNS contract. For example, according to Honeywell ITT participated in feasibility and architecture studies and in the development of requirements and specifications for assets and systems to be developed or operated by the company awarded the SCNS contract. The overarching concern in biased ground rules cases is that a contractor involved in the requirements-development process could influence creation of competition parameters that unduly favor its interests.

Third, Honeywell asserted that ITT gained an unfair competitive advantage due to its access to Honeywell's non-public proprietary information. For example, Honeywell claimed that ITT employees had access to a Honeywell database that contained information regarding the processes, hardware, components, and parts used in Honeywell's technical approach to implementing the NENS contract. In addition, Honeywell alleged that Chang gained access to important elements of Honeywell's approach to the SCNS contract by evaluating the information Honeywell submitted to NASA in connection with a separate solicitation to build two tracking and data relay satellites.

As discussed above, although we did not set out to resolve Honeywell's allegation that ITT suffered from an organizational conflict of interest in the SCNS procurement, during the course of our investigation we examined whether ITT employees in fact exercised oversight of Honeywell's work on the NENS contract; created or helped to create the requirements, specifications, or statements of work for the SCNS contract; or had access to Honeywell proprietary information while preparing ITT's SCNS bid.

B. Facts

NASA performs its space communications activities through a complex combination of ground and space-based hardware operated by NASA employees and contractors. As discussed above, at the time of the SCNS procurement this contract workforce included employees of both Honeywell and ITT. Honeywell held the NENS contract pursuant to which it was responsible for operating NASA's fleet of tracking and data relay satellites and associated ground network sites. ITT provided systems engineering and support to NASA pursuant to the MSP contract, including "spectrum management, telecommunications analyses, mathematical modeling, requirements assessments, system enhancement concepts, architectural trade studies, conceptual designs, [and] specification development" ¹⁴

On a typical day during the NENS contract period, approximately 800 Honeywell employees at 10 domestic and international locations worked on NENS-related functions. In contrast, approximately 40 ITT employees worked on MSP-related functions such as witnessing tests, conducting simulations and analyses, and participating in working groups with NASA and other contractors.

By virtue of their work on the MSP contract, ITT employees had access to Honeywell documents and data related to Honeywell's execution of the NENS contract. However, the MSP contract included a clause that prohibited ITT from using certain categories of Honeywell's data for any

¹⁴ MSP Statement of Work at page 2, May 29, 2003.

purpose other than the administration of the MSP contract. In addition, the MSP contract limited access to certain “sensitive information” such as trade secrets and commercial and financial information to those ITT employees who needed it to perform services under the contract.¹⁵ Finally, Honeywell required select ITT employees to sign “Proprietary Information Exchange Agreements” that permitted them access to data marked by Honeywell as proprietary subject to certain conditions, including that they use it only for the purposes of their work on the contract and not disclose it to third parties. The Proprietary Agreement provided that any information not marked as proprietary by Honeywell would be “acquired . . . free from any restrictions or use on disclosure.”

ITT witnesses told the OIG that as an experienced government contractor ITT was aware of its responsibility to avoid organizational conflicts of interest and ITT staff took appropriate measures to ameliorate any such conflicts. ITT representatives described the company as a “proactive industry leader in providing [organizational conflict] avoidance and mitigation instruction and guidance to [its] employees” and asserted that such guidance was provided to ITT employees assigned to the MSP contract. ITT employees who worked on the MSP contract told us they were “very cautious” regarding potential conflicts and addressed this topic internally and with NASA. For example, ITT representatives told us that the company did not compete for a contract to build two new tracking satellites for NASA because of concerns that Chang’s provision of engineering advice to NASA while the Agency was drafting the satellite contract’s specifications may have created an organizational conflict of interest for ITT.

ITT’s Code of Conduct in effect at the time of the SCNS procurement addressed employees’ responsibilities regarding confidential information. For example, ITT employees were advised that:

Obtaining confidential information from a third party without adequate legal safeguards is improper and may expose ITT Industries to legal risks. Accordingly, no employee may accept such information without the advice of the Company Legal Department and until an agreement in writing has been reached with the offerer. After such information is obtained, its confidentiality must be protected as provided in the agreement.

* * * * *

You may not attempt to obtain or use confidential information of other companies or source selection information of the government. Source selection information is information that the government uses in evaluating bids or proposals. If you think that you have received either confidential information or source selection information, you should immediately contact your supervisor and your Company Legal Department. You should not examine the information or copy it.

¹⁵ The NASA FAR Supplement (NFS) in effect at the time stated: “Sensitive information refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.” NFS 1852.237-72.

1. Oversight of Honeywell's Performance under the NENS Contract

Honeywell's performance under the NENS contract was evaluated pursuant to a written "Performance Evaluation Plan." According to NASA personnel, this Plan established a general framework for evaluating Honeywell's performance and making award fee determinations. Under the Plan, evaluations and fee determinations were to be made by a Performance Evaluation Board composed of NASA civil servants.

As discussed above, ITT's role under the MSP contract was to provide systems engineering and support to NASA. ITT witnesses we spoke with said that under the contract ITT provided such services as engineering analyses, proof of concept activities, spectrum management, modeling and simulation activities, and advanced planning. Brockdorff told us that for each task assigned to ITT, a NASA employee was assigned as "task manager" and that NASA employees provided direction to ITT on all tasks.

ITT's Senior Program Manager assigned to the MSP contract told us that his group provided systems engineering support including authoring systems-level requirements, providing operations concepts development, verifying that plans met NASA requirements and methodology, and witnessing on-site tests. The Program Manager said all of these duties were carried out under the direct supervision of NASA employees and that "at all times, direction regarding our systems engineering support [came] from the NASA customer." Similarly, an ITT systems engineer described her duties as witnessing tests and reviewing technical data and documents. She said she was responsible for observing tests and making sure proper procedures were followed, but had no authority to direct how the tests were conducted and did not make pass/fail determinations regarding Honeywell's or its subcontractors' performance.

NASA and ITT witnesses told the OIG that consistent with the terms of the NENS contract, NASA employees reviewed and evaluated Honeywell's performance under the contract. For example, the Deputy Assistant Director in charge of Code 450 and the NASA employee who served as the COTR for the NENS contract from 2004 to 2008 told us that all aspects of evaluating and directing Honeywell's performance under the NENS contract were conducted by NASA employees, not employees of ITT or any other contractor. The Deputy Assistant Director said that NASA employees used a performance matrix to grade Honeywell's performance on a monthly basis.

In addition, both of these witnesses reported that a NASA employee was assigned to each task performed by ITT employees as a task monitor and that it was the NASA task monitors who conducted the evaluations of Honeywell's work. The COTR noted that one of his responsibilities was reviewing the evaluations prepared by these NASA task monitors.

With regard to preparation of the SCNS procurement documents such as the request for information, request for proposals, statements of work, and representative task orders, members of the NASA SCNS procurement team told us they prepared these documents without assistance from ITT or any other contractor personnel. Moreover, independently we found no evidence indicating that ITT employees played any role in the preparation of these documents.

2. ITT's Access to Honeywell Data

The NENS contract incorporated a FAR provision that gave NASA “unlimited” rights to all data produced by Honeywell pursuant to the contract.¹⁶ NASA witnesses told us that in order to “level the playing field” for all prospective bidders, they placed the NENS-related information that had been produced by Honeywell and other relevant information in a publicly available online database prior to soliciting bids for the SCNS contract.

Honeywell witnesses told the OIG that they used a database known as the Enterprise Document and Image Management System (Enterprise System) to house both their NENS and SCNS data.¹⁷ The SCNS procurement folder was in a separate password-protected portion of the database and was accessible to only a limited number of Honeywell employees. However, the NENS data was available to a wider circle of NASA and contractor personnel on a need-to-know basis. Honeywell witnesses told the OIG that although they knew which ITT employees had been granted access to the Enterprise System, they had no means of identifying whether any of those employees actually accessed the system or what information they reviewed.

Eleven ITT employees, including Chang and Brockdorff, signed Proprietary Agreements with Honeywell. The OIG obtained written statements, signed under penalty of perjury, from 10 of these 11 employees. The 11th employee had left ITT before the SCNS procurement began and was unavailable for an interview. Chang and Brockdorff told the OIG they could not recall ever accessing Honeywell's Enterprise System, and five of the others said they only accessed it on rare occasions. Moreover, all 10 individuals denied using any information from the Enterprise System to develop or inform ITT's SCNS bid.

Honeywell told the OIG that one of the documents it maintained within the accessible portion of the Enterprise System was an Excel spreadsheet that listed information concerning components, parts, quantities, vendors, and prices used in Honeywell's technical approach to design methodologies in the NENS contract. Honeywell marked this spreadsheet with the term “Honeywell Confidential” and contends that the information in the spreadsheet would have given a competitor insight into Honeywell's technical approach to a key requirement for the SCNS bid proposal. However, the NASA employees who served as the Contracting Officer and the COTR for the SCNS contract told us that despite Honeywell's marking, they did not consider the vast majority of the information in the spreadsheet to be proprietary because, with the exception of Honeywell's cost and pricing data, the same information was contained in NASA's publicly available SCNS library.

An ITT employee who signed a Proprietary Agreement with Honeywell told the OIG that he received a copy of the spreadsheet from Honeywell via e-mail on a bimonthly basis. He said he was the only ITT representative who received the spreadsheet from Honeywell and that he shared the spreadsheet with other ITT employees who had signed Proprietary Agreements and who had a need to know the information in order to perform their MSP contract-related work.

¹⁶ See FAR Subpart 52.227-14.

¹⁷ NASA required Honeywell to place all non-proprietary NENS documents in an electronic database that would be easily accessible to NASA and relevant contractor employees. Although NASA had a database available for Honeywell's use, Honeywell requested to instead place the information in Honeywell's Enterprise System.

Eight of the 11 ITT employees who signed Proprietary Agreements with Honeywell told us that they worked on ITT's SCNS proposal. Again, all of these individuals denied using any Honeywell information, including the spreadsheet, to develop ITT's SCNS bid.

3. Chang and Brockdorff

At the time of the SCNS procurement, Chang and Brockdorff were long-term ITT employees with extensive NASA contracting experience. Chang's focus was on business development with NASA and the Department of Defense, while Brockdorff had been ITT's Program Manager for the MSP contract since 2003.

Chang and Brockdorff told the OIG that they began working together in late 2005 to assess the feasibility of bidding on the SCNS contract. Chang was the person responsible for producing ITT's proposal and Brockdorff served as his Deputy. According to Chang, his responsibilities included talking with the NASA customers, coordinating with team members, budgeting resources and time for the proposal effort, and assessing ITT's probability of success.

Both Chang and Brockdorff told the OIG that ITT's effort to secure the SCNS contract proceeded in stages, beginning with a series of "voice of the customer" meetings in 2005 and 2006 at which they discussed with NASA personnel their expectations for the project. Brockdorff described these meetings as standard industry practice and a regular part of ITT's business. According to both NASA and Honeywell witnesses, Honeywell engaged in similar meetings in preparation for the SCNS procurement.

Following NASA's release of the SCNS request for information in March 2007, Chang and Brockdorff said they established a more formal SCNS team that worked out of offices in Northern Virginia, Maryland, and Colorado. The membership of this team varied over time, but grew to as large as 50 ITT employees. Brockdorff said that during this period she split her time between her MSP contract oversight responsibilities and preparation of the SCNS proposal. ITT officials said the company was "very cautious" regarding possible conflict issues involving the NENS and SCNS contracts and provided "OCI [organizational conflict of interest] awareness and compliance training" to MSP employees and "proactively implemented OCI avoidance and mitigation plans where appropriate with respect to certain MSP tasks."

While Brockdorff said she could not recall accessing Honeywell's Enterprise System, she admitted that as part of her MSP duties she had viewed information marked as proprietary by Honeywell. Specifically, Brockdorff said she was privy to two such documents: a briefing paper about the H-II Transfer Vehicle used for transporting materials to the ISS and a Systems Requirements Review for a NASA antenna system. However, she denied using any information in these documents to prepare ITT's SCNS bid, and we developed no evidence to the contrary.

Brockdorff stated that the H-II briefing paper was sent to her via e-mail as part of a wide distribution list that included foreign personnel. In her view, the document had limited relevance to the SCNS procurement because the transport of materials to the ISS was not related to the subject matter of the SCNS contract. With regard to the second document, Brockdorff told us that Honeywell subsequently removed the proprietary markings at NASA's request.

Chang told the OIG that he does not believe he ever saw any Honeywell information marked proprietary. He also did not recall ever being granted a password or any other access to Honeywell computer systems and stated he never used Honeywell's databases. Honeywell states that Chang was given access to its database, but it cannot prove he actually accessed it.

4. Chang's Involvement with NASA's Procurement of Two Tracking Satellites

As noted above, Honeywell contended that Chang gained access to important elements of Honeywell's approach to the SCNS contract by evaluating information Honeywell submitted to NASA in connection with a separate contract solicitation. Chang told the OIG that he assisted NASA personnel in preparing the procurement specifications for this contract, which sought bids to build two tracking and data satellites known as TDRS K and L. Chang told the OIG that because of his involvement in preparing these contract requirements, ITT did not bid on the TDRS K and L contract consistent with organizational conflict of interest rules. Chang said that he had no other involvement with this procurement and denied playing any role in evaluating the bids of Honeywell or any other companies that competed for the project. Interviews with NASA officials involved in choosing the satellite contractor confirmed that neither Chang nor any other contractor was involved in the proposal evaluation process and therefore were not privy to the information Honeywell submitted to NASA.

5. Perspective of SCNS Selection Officials

Consistent with its procedures for major procurements, NASA established a Source Evaluation Board to evaluate the technical merits of proposals submitted for the SCNS contract. The Board was composed of NASA employees with expertise in space communications and government contracting and was charged with assessing the proposals and making a recommendation to Gerstenmaier, who served as the Source Selection Authority for the contract.

The OIG interviewed the six voting members of the Board. All six reported that prior to serving on the Board they received approximately 3-4 hours of training from Goddard's Office of Procurement and Office of Chief Counsel focusing on procurement integrity, ethics, and source evaluation guidelines. In addition, all six said they carefully reviewed the proposals that were submitted and saw no evidence that ITT had used Honeywell data in preparing its proposal or any other sign of irregularities in the procurement process. The Board members told the OIG that they ultimately recommended ITT to Gerstenmaier because they believed that ITT had a better understanding of NASA's needs and a better overall capability in the area of systems engineering.

Gerstenmaier told the OIG that he too observed no misconduct by ITT in the bid process and that no allegations of misconduct were brought to his attention. He said he considered himself a "good pick" to serve as the selecting official because he was an informed but disinterested party who was in a position to pose the "tough questions" to the Board. He explained that he had not previously worked with the NASA personnel at Goddard who oversaw the NENS contract and prepared the SCNS procurement documents and disavowed any personal biases toward any of the competing contractors. He noted that he considered the SCNS competition to have been "very close" and said that ITT's advantage in mission suitability, especially in the area of gaining

efficiencies, avoiding obsolescence, and systems engineering, was determinative to his decision to select ITT as the winning bidder.

C. Analysis

To evaluate Honeywell's claims concerning alleged misconduct by ITT personnel, the OIG first looked for any evidence that ITT personnel violated the Procurement Integrity Act by knowingly attempting to obtain bid, proposal, or source selection information prior to NASA's award of the SCNS contract or engaging in any other criminal misconduct related to the bid process. We found no such evidence. Although we found that a limited number of ITT personnel had access to some information Honeywell considered proprietary, none of this information was SCNS-related source selection, contractor bid, proposal, or any other type of information covered by the Act. Nor did we uncover any evidence that ITT engaged in bid rigging or other similar conduct.

Aside from criminal misconduct, we looked for indications that ITT personnel had used Honeywell proprietary information in preparing or developing ITT's SCNS bid. Again, we found no such indications. As an initial matter, we found that the majority of information produced by Honeywell under the NENS contract was not proprietary, but rather information that by contract belonged to NASA. We also found that in order to "level the playing field" for all potential bidders, NASA had placed this and other relevant information in a database that was available to all SCNS bidders. In addition, neither Gerstenmaier nor the voting members of the Source Selection Board who were familiar with both companies' bids observed any indications that ITT had used Honeywell's proprietary data to prepare its bid. Finally, the ITT employees responsible for developing ITT's SCNS proposal denied under penalty of perjury that they had used Honeywell's proprietary data to prepare ITT's bid, and Honeywell representatives were unable to identify any specific evidence that ITT personnel had used Honeywell proprietary data in this way.

Turning to Honeywell's organizational conflict of interest claim, as discussed above we did not attempt to resolve this aspect of Honeywell's bid protest. However, during the course of our investigation we gathered evidence that bears on several of the underlying issues that form the basis for Honeywell's claim. First, Honeywell claimed that the MSP contract placed ITT in the role of evaluating Honeywell's performance on the NENS contract. However, the MSP contract and all NASA and ITT witnesses we spoke with were clear that it was the responsibility of NASA employees, not ITT contract personnel, to evaluate Honeywell's work on NENS. Moreover, other than its generalized allegation, Honeywell provided no specific evidence of evaluative work performed by ITT personnel. Accordingly, it does not appear that ITT was in a position to skew evaluations of Honeywell so as to place itself in a superior competitive position for purposes of the SCNS procurement.

Second, we examined the access ITT personnel had to proprietary Honeywell data. We found that the MSP contract contemplated that a limited number of ITT personnel would have access to Honeywell's proprietary data, and that 11 ITT employees signed Proprietary Agreements as a condition of gaining such access. However, it was unclear to what extent any ITT employee actually accessed Honeywell's proprietary data. Although ITT personnel who signed Proprietary Agreements were provided with a spreadsheet that Honeywell had marked as confidential,

NASA witnesses told us that nearly identical information was available in NASA's publicly available SCNS library.

We also found that 8 of the 11 employees who signed Proprietary Agreements with Honeywell played a role in the SCNS procurement. We obtained sworn statements from each of these individuals, including Chang and Brockdorff, denying any misconduct. Chang and Brockdorff stated they could not recall ever accessing Honeywell's Enterprise System and five of the others said they only rarely did so. Because Honeywell had not maintained records of who accessed the Enterprise System, it could provide no evidence that contradicted these sworn statements. In addition, Chang denied ever having accessed Honeywell proprietary data, and we were unable to determine whether the two documents marked proprietary that Brockdorff recalled reviewing actually contained proprietary information. Moreover, Chang, Brockdorff, and the other ITT employees who signed Proprietary Agreements denied under oath using any Honeywell proprietary information to prepare ITT's SCNS bid.

Finally, we uncovered no evidence that ITT helped create the requirements, specifications, or statements of work related to the SCNS contract.

In sum, we found no evidence that ITT personnel violated the Procurement Integrity Act or committed any other criminal misconduct in connection with the SCNS procurement. Nor did we find evidence that ITT used Honeywell's proprietary information to prepare or develop its SCNS bid. Although we found that some ITT employees had access to a Honeywell database containing information that Honeywell claimed was proprietary, it was not clear whether or how often these employees accessed this database or that any information they may have accessed was proprietary in nature. In addition, we found that ITT employees did not create the requirements, specifications, or statements of work for the SCNS contract, nor did they evaluate Honeywell's performance under the NENS contract.