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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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September 7, 2016

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Mr. Dodaro:

We are writing to call to your attention to an apparent Antideficiency Act (ADA) violation by the U.S. Office of Personnel Management (OPM). We request that you render an opinion regarding whether OPM violated the ADA when the agency accepted services from a company—CyTech Services LLC—without payment, and take additional action as appropriate. The relevant section of the ADA states:

> An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.[1]

In brief, we believe OPM violated the ADA when the agency retained and deployed CyTech's software following a product demonstration, and never paid. On April 21, 2015, CyTech demonstrated its CyFIR tool at OPM's headquarters in Washington, D.C.[2] Following the demonstration, OPM staff represented they intended to purchase licenses to deploy CyTech's software in various places throughout the agency. The next day, CyTech, relying on the government's verbal request, began expanding the scope of the software services that were installed for the demonstration and provided a license to OPM for 1,000 endpoints that expired on June 30, 2015.[3]

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[1] 31 U.S.C. § 1342 (2012).
[2] OPM Visitor Log, Washington, D.C. (Apr. 21, 2015) at HOGR020316-000522 (OPM Production: Feb. 16, 2016).
[3] Email from Ben Cotton, Chief Exec. Officer, CyTech to H. Comm. on Oversight & Gov't Reform Majority Staff (Apr. 16, 2016) (confirming the nature of the licensing arrangement as of April 22, 2015) (on file with the Committee).

During the period in question, CyTech personnel also provided incident response services to OPM and installed related hardware. Documents and testimony obtained by the Committee show OPM retained CyTech's equipment for months after the demonstration, and used at least some of the software licenses. The documents and testimony also show OPM never paid CyTech for these services.

The facts are described in greater detail in the enclosed Committee report, "The OPM Data Breach: How the Government Jeopardized Our National Security for More than a Generation."[4] Chapter five of the report contains the findings that form the basis of this referral.

Please contact Katie Bailey of Chairman Chaffetz' staff at (202) 225-5074 with any questions. Thank you for your attention to this matter.

Sincerely,

Jason Chaffetz
Chairman

Michael R. Turner
Member

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

[4] H. Comm. on Oversight & Gov't Reform, *Staff Report: The OPM Data Breach: How the Government Jeopardized Our National Security for More than a Generation*, 114th Cong. (Sept. 7, 2016).