

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 11-136EDT

DATE: August 19, 2011

RESPONDENT: TAAFFE, Michael, former Assistant Administrator, Health Services Section, Oregon Department of Corrections

COMPLAINANT: GALLEGOS, Vicki, Procurement and Contract Specialist, Purchasing and Contracts Unit, Oregon Department of Corrections

RECOMMENDED ACTION: Move to Investigate Possible Violations of ORS 244.040(1), ORS 244.040(3), ORS 244.040(4), ORS 244.040(5), ORS 244.047(2) and ORS 244.120(1)(c)

1 **SYNOPSIS:** Michael Taaffe was the Assistant Administrator of the Health Services Section for
2 the Oregon Department of Corrections (DOC) during, and prior to, the period of time relevant to
3 this preliminary review. The complainant alleged that Mr. Taaffe may have had a direct
4 beneficial financial interest in a DOC contract, in which he participated in the authorization of
5 while employed by DOC, within two years of the date the contract was authorized. It was also
6 alleged Mr. Taaffe may have violated the conflict of interest provisions of Oregon Government
7 Ethics law.

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9 Information available for this preliminary review appears to indicate that Mr. Taaffe may have
10 had a direct beneficial financial interest in a public contract in which he participated in the
11 authorization of while acting in his former official capacity as a public official representing DOC.

1 Information also appears to indicate that Mr. Taaffe may have been met with conflicts of interest
2 while participating in official actions, decisions or recommendations that could or would have
3 been to his private pecuniary benefit and may have failed to comply with disclosure requirements
4 identified in ORS 244.120(1)(c) and may have used or attempted to use his official position to
5 obtain prohibited financial benefits.

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7 It appears an investigation is warranted to determine if violations of Oregon Government Ethics
8 law occurred.

9
10 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the issues
11 addressed herein:

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13 244.020(1) " 'Actual conflict of interest' means any action or any decision or recommendation
14 by a person acting in a capacity as a public official, the effect of which would be to the private
15 pecuniary benefit or detriment of the person or the person's relative or any business with
16 which the person or a relative of the person is associated unless the pecuniary benefit or
17 detriment arises out of circumstances described in subsection (12) of this section."

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19 244.020(2) " 'Business' means any corporation, partnership, proprietorship, firm, enterprise,
20 franchise, association, organization, self-employed individual and any other legal entity
21 operated for economic gain but excluding any income-producing not-for-profit corporation
22 that is tax exempt under section 501(c) of the Internal Revenue Code with which a public
23 official or a relative of the public official is associated only as a member or board director or
24 in a nonremunerative capacity."

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26 244.020(3) " 'Business with which the person is associated' means:"

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1 244.020(3)(a) "Any private business or closely held corporation of which the person or the
2 person's relative is a director, officer, owner or employee, or agent or any private business or
3 closely held corporation in which the person or the person's relative owns or has owned
4 stock, another form of equity interest, stock options or debt instruments worth \$1,000 or
5 more at any point in the preceding calendar year."

6
7 244.020(12) " 'Potential conflict of interest' means any action or any decision or
8 recommendation by a person acting in a capacity as a public official, the effect of which could
9 be to the private pecuniary benefit or detriment of the person or the person's relative, or a
10 business with which the person or the person's relative is associated, unless the pecuniary
11 benefit or detriment arises out of the following:"

12
13 244.020(14) " 'Public official' means any person who, when an alleged violation of this
14 chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other
15 public body as defined in ORS 174.109 as an elected official, appointed official, employee or
16 agent, irrespective of whether the person is compensated for the services."

17
18 **244.040 "Prohibited use of official position or office; exceptions; other prohibited**
19 **actions.** (1) Except as provided in subsection (2) of this section, a public official may not use
20 or attempt to use official position or office to obtain financial gain or avoidance of financial
21 detriment for the public official, a relative or member of the household of the public official, or
22 any business with which the public official or a relative or member of the household of the
23 public official is associated, if the financial gain or avoidance of financial detriment would not
24 otherwise be available but for the public official's holding of the official position or office."

25
26 244.040(3) "A public official may not solicit or receive, either directly or indirectly, and a
27 person may not offer or give to any public official any pledge or promise of future
28 employment, based on any understanding that the vote, official action or judgment of the
29 public official would be influenced by the pledge or promise."

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1 244.040(4) "A public official may not attempt to further or further the personal gain of the
2 public official through the use of confidential information gained in the course of or by reason
3 of holding position as a public official or activities of the public official."
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5 244.040(5) "A person who has ceased to be a public official may not attempt to further or
6 further the personal gain of any person through the use of confidential information gained in
7 the course of or by reason of holding position as a public official or activities of the person as
8 a public official."
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10 244.040(7) "The provisions of this section apply regardless of whether actual conflicts of
11 interest or potential conflicts of interest are announced or disclosed under ORS 244.120."
12

13 **244.047 "Financial interest in public contract.** (1) As used in this section:

14 (a) "Public body" has the meaning given that term in ORS 174.109.

15 (b) "Public contract" has the meaning given that term in ORS 279A.010.

16 (2) Except as provided in subsection (4) of this section, a person who ceases to hold a
17 position as a public official may not have a direct beneficial financial interest in a public
18 contract described in subsection (3) of this section for two years after the date the contract
19 was authorized.

20 (3) Subsection (2) of this section applies to a public contract that was authorized by:

21 (a) The person acting in the capacity of a public official; or

22 (b) A board, commission, council, bureau, committee or other governing body of a public
23 body of which the person was a member when the contract was authorized.

24 (4) Subsection (2) of this section does not apply to a person who was a member of a board,
25 commission, council, bureau, committee or other governing body of a public body when the
26 contract was authorized, but who did not participate in the authorization of the contract."
27

28 **244.120 "Methods of handling conflicts; Legislative Assembly; judges; appointed**
29 **officials; other elected officials or members of boards.** (1) Except as provided in
30 subsection (2) of this section, when met with an actual or potential conflict of interest, a public
31 official shall:"

1 244.120(1)(c) "If the public official is any other appointed official subject to this chapter, notify
2 in writing the person who appointed the public official to office of the nature of the conflict,
3 and request that the appointing authority dispose of the matter giving rise to the conflict.
4 Upon receipt of the request, the appointing authority shall designate within a reasonable time
5 an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a
6 manner specified by the appointing authority."
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8 The following Oregon Administrative Rules is applicable to the issues addressed herein:
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10 199-005-0035(6) "As used in ORS 244.047, a public contract is "authorized by" a public
11 official if the public official performed a significant role in the selection of a contractor or the
12 execution of the contract. A significant role can include recommending approval or signing
13 of the contract, including serving on the selection committee or team, or having the final
14 authorizing authority for the contract."
15

16 **PRELIMINARY REVIEW:** The Oregon Government Ethics Commission (Commission) received
17 a letter of complaint from Vicki Gallegos, Procurement and Contract Specialist, Oregon
18 Department of Corrections on 4/26/11 (#PR1 through #PR7). Ms. Gallegos alleged that Michael
19 Taaffe, former Assistant Administrator of the Health Services Section, Oregon Department of
20 Corrections (DOC), may have violated the conflict of interest provisions of Oregon Government
21 Ethics law and may have had a direct beneficial financial interest in a public contract, in which he
22 participated in the authorization of while employed by DOC, within two years of the date the
23 contract was authorized. Receipt of the complaint was acknowledged in letters to Ms. Gallegos
24 and Mr. Taaffe. Mr. Taaffe was provided with copies of the information received in the
25 complaint. The parties were invited to provide any information, which would assist the
26 Commission in conducting the preliminary review in this matter.

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1 The following is a summary of information provided by the complainant, Ms. Gallegos that relates
2 to the alleged violations of Oregon Government Ethics law:

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4 Ms. Gallegos indicated, "On 4/8/11, I was informed by a coworker that our Assistant
5 Administrator of Health Service, Michael Taaffe, had retired from our agency (DOC) one day
6 and went to work for one of our contractors (CHP) the next day. The vendor has now set
7 Mr. Taaffe up as an on-site vendor representative in the same office he occupied when
8 employed by DOC. His new position title is CHP Account Manager Contracts. This
9 information has been verified by my manager, Ray Brixey" (#PR1).

10
11 Ms. Gallegos indicated that Mr. Taaffe had input on the development of the solicitation, was
12 a member of the "RFP review committee" and "played a significant role in authorizing the
13 contract with Physician Health Partners a.k.a. Correctional Health Partners (CHP); the
14 vendor with which he is now employed" (#PR1).

15
16 Ms. Gallegos also provided information related to post-public employment waiting periods as
17 described in page 17 of the *Guide for Public Officials* the Commission adopted on 10/26/10.
18 She then explained, "Mr. Taaffe left his official position and went to work for the Contractor
19 immediately; obtaining a direct, beneficial, financial interest in the contract and abandoning
20 the requisite two year waiting period." Ms. Gallegos also noted, "Mr. Taaffe is still set up
21 with expenditure authority in our accounting system. That authority should be terminated as
22 soon as possible" (#PR1 and #PR2).

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1 Ms. Gallegos provided copies of signed evaluation forms that indicated Mr. Taaffe
2 participated in the evaluation of the "Request for Proposal #3910, TPA for Inmate Off-Site
3 Health Care" which are summarized or excerpted as follows (#PR3 through #PR5):
4

- 5 ● The evaluation forms identified the proposing firm as "Physician Health Partners,
6 LLC."
- 7 ● The forms included instructions to the evaluator stating, "This form is provided as a
8 means to evaluate proposals received in response to Solicitation #3910. Please
9 review the specific sections of the Solicitation, copied below, and evaluate
10 Proposer's response, then indicate your rating for each evaluation category."
- 11 ● The evaluations appear to consist of a rating system that requires the evaluator to
12 rate each section of the RFP using a five step scale ranging from "excellent" to
13 "poor."
- 14 ● Each evaluation form included a section titled "Conflict of Interest Statement." The
15 form stated, "A conflict of interest exists whenever there is a situation in which an
16 Evaluation Committee member or relative, has or may have financial or other
17 interest or prejudice through current or past association or relationship with any
18 Proposer."
- 19 ● The forms require the evaluator to sign and date the "Conflict of Interest
20 Statement" following this statement, 'I hereby certify that I have read the above
21 policy statement defining conflict of interest; that I understand the contents thereof;
22 that no conflict of interest exists as therein defined which precludes an impartial
23 evaluation of propels to be considered by me, and that if such a conflict should
24 arise, I will immediately disqualify myself from this evaluation and selection
25 process.'" The records indicate Mr. Taaffe signed each form, providing the date as
26 3/6/09.
27

28 Ms. Gallegos also provided records illustrating scores submitted by three evaluators,
29 including one identified as "Michael" for "RFP #3910 – Inmate Off-Site Healthcare" and
30 records that appear to indicate that the provider name changed from Physician Health
31 Partners to Correctional Health Partners (#PR6 and #PR7).

1 Mr. Taaffe presented his position in response to these allegations in a letter dated 5/27/11. The
2 full text of his letter will be provided to the members of the Commission in their meeting book
3 materials. Information from his submission is summarized or excerpted below (#PR8):
4

5 Mr. Taaffe explained, "It is true that I retired from the Oregon Department and immediately
6 went to work for Correctional Health Partners (CHP). It is also true that I was a member of
7 an 'evaluation committee' in March of 2009 that contributed to the selection of a Third Party
8 Administrator (TPA) that ultimately led to the Department of Corrections selecting and
9 contracting with Correctional Health Partners. I also believe my role to have been less than
10 'significant' under the law since I was not a member of the 'selection committee'."
11

12 Mr. Taaffe indicated, "Additionally my role on the 'evaluation committee' in the 2009 selection
13 process was important to completing the process but not instrumental or, in any way, unduly
14 influential in which company was selected. As a member of the committee I carried out the
15 due diligence required of me and when my task was completed I shared my work with the
16 decision makers. While those who participated in the rating and ranking process (evaluation
17 committee) did score all of the vendors on predetermined scoring criteria the entire list went
18 forward to the Health Service Administrator for further steps in the selection process. While I
19 don't recall all of the additional process steps and was not involved in them, I do know there
20 was an effort to investigate corporate backgrounds and some determination of ability to
21 perform under a contract, as well as, discussions of best fit for DOC. Ultimately, the Health
22 Services Administrator in consultation with the Assistant Director for Operations and the
23 Director of Corrections weighed all of the information available to them, including the results
24 of the rating and ranking evaluation and were, 'de facto' the 'Selection Committee'."
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26 Further Mr. Taaffe explained, "At this writing I do not know who signed or authorized the
27 contract into existence but it would be at least two pay grades above my former position and
28 may have well been the Director of Corrections."
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1 Mr. Taaffe provided information that indicated that once CHP had been selected and the
2 contract was established the employee that was named as the contract administrator
3 reported directly to him. Mr. Taaffe also explained, "...I would have signed any request
4 paperwork that would begin the process to amend this contract. Over the course of the last
5 two years I can think of only two amendment requests moving forward, both of those
6 amendments were indicated by DOC. Due to their complexity both amendments had to be
7 written by the Department of Justice (DOJ) and were ultimately signed, once again, by a
8 Department Representative at least two pay grades above me."
9

10 Mr. Taaffe indicated that CHP, in the terms of the DOC contract, was required to provide an
11 account manager. He explained that that the account manager position was vacated when
12 the incumbent CHP employee left the company for an outside employment opportunity. Mr.
13 Taaffe stated, "Correctional Health Partners initiated a process to fill the position first by
14 posting the position within the company (as is their policy) and only then advertising the
15 position openly when there were no interested candidates internal to the company. It is at
16 the point that CHP did an open solicitation that I applied for the position and went through a
17 multi-step interview process before being selected to fill the position."
18

19 Mr. Taaffe provided information related to his current responsibilities as the account manager
20 for CHP. He explained, "It is true that part of my responsibility in my Account Manager role
21 with CHP is to see that the company is fulfilling all of its obligations to the Department of
22 Corrections in the performance of the existing contract and to report to corporate
23 headquarters if I see any problems or issues. I do not manage the contract CHP has with the
24 Department of Corrections nor do I have any involvement in its authorization or
25 reauthorization. The position I interviewed for and ultimately was selected for with CHP is the
26 equivalent of a represented position in State government. Since I am not in a management
27 position with CHP I do not get involved in management decisions related to any contracts."
28 Mr. Taaffe explained he had made his DOC supervisor, "...aware of my desire to pursue the
29 job opportunity at the time I responded to the solicitation. He reviewed the internal Code of
30 Ethics and Code of Conduct and sought out additional opinion (sic) from his supervisor as
31 well as other Assistant Directors. As a result the ethics question was reviewed independently

1 by the Department's Assistant Director of Human Resources, the Assistant Director for
2 General Service and the Audits Administrator and to my knowledge none found fault with my
3 departure and subsequent employment with correctional Health Partners."
4

5 In addition to information provided by Ms. Gallegos and Mr. Taaffe, select records were obtained
6 from the Oregon Department of Corrections (DOC). Relevant information is excerpted as
7 follows:
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9 An e-mail dated 5/10/11, appears to describe the circumstances involving Mr. Taaffe from
10 Max Williams, DOC Director, to representatives of the Governor's Office, the Department of
11 Administrative Services and DOC. It appears Mr. Williams indicated, "Michael Taaffe worked
12 most recently in our Health Services office in a budget/business role. He retired sometime
13 last month and immediately went to work for our contracted third-party administrator for
14 Health Care. Apparently, Mr. Taaffe was on a panel of three people that made the contract
15 selection choice (about a year and a half ago) for this vendor, although I'm told he did not
16 make the final selection nor did he administer the contract. Some of the contractor's
17 employees are embedded with DOC Health Service staff in our offices, and Mr. Taaffe is one
18 of those." It also appears Mr. Williams explained, "I am sorry to say that I wasn't made aware
19 of the situation until the retirement was complete and he had been hired by the contractor.
20 What is unfortunate is that his immediate supervisor didn't not (sic) recognize any concerns
21 (even internal policies) with this approach and told Mr. Taaffe he didn't think it was a problem.
22 The supervisor did not ask DOC leadership or DOJ for any opinion or advice on the issue
23 and did not feel it was a problem since Mr. Taaffe was retiring from state service" (#PR9).

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1 ORS 244.320 requires the Oregon Government Ethics Commission to prepare and publish a
2 manual on government ethics that explains in understandable terms the requirements of ORS
3 Chapter 244 and the Commission's interpretation of those requirements. Although there was no
4 indication that Mr. Taaffe consulted the Commission's publication, the complainant provided
5 information related to post-public employment waiting periods as described in the Commission's
6 current manual adopted by the Commission on 10/26/10. The *Guide for Public Officials* states on
7 page 17:

8
9 "How would Oregon Government Ethics law apply when a former public official is employed
10 by a business that has a contract with the public body previously represented by the former
11 public official?

12
13 For two years after a public official ceases holding or being employed in a position as a
14 public official, that public official may not have a direct beneficial financial interest in a public
15 contract when one of the parties to the contract is the public official's former public body if
16 the contract was authorized by [ORS 244.047(2) and (3)]:

17
18 •The former public official, who authorized the contract while acting in the capacity
19 previously held as a public official.

20
21 •The former public official, as a member of a governing body [board, commission, council,
22 bureau, committee], participated in official action to approve the contract.

23
24 'Authorized by' is defined in OAR 199-005-0035(6) as meaning that the former public official
25 had a significant role in the contracting process to include participating on a selection
26 committee, recommending approval, voting, giving final authorization or signing a contract.

27 The definition in the rule is as follows:

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1 'As used in ORS 244.047, a public contract is "authorized by" a public official if the public
2 official performed a significant role in the selection of a contractor or the execution of the
3 contract. A significant role can include recommending approval or signing of the contract,
4 including serving on a selection committee or team, or having the final authorizing
5 authority for the contract.'

6
7 What are the restrictions on employment after I resign, retire or leave my public official
8 position?

9
10 •ORS 244.040(1) prohibits public officials from using their official positions or offices to
11 create a new employment opportunity; otherwise, most former public officials may enter
12 the private work force with few restrictions.

13
14 •ORS 244.040(5) prohibits a former public official from attempting to use confidential
15 information for personal gain if the confidential information was obtained while holding the
16 position as a public official."

17
18 **CONCLUSIONS:** Michael Taaffe was the Assistant Administrator of the Health Services Section
19 for the Oregon Department of Corrections (DOC) during, and prior to, the period of time relevant
20 to this preliminary review. He was a public official as defined in ORS 244.020(14).

21
22 ORS 244.047 prohibited Mr. Taaffe, as a public official, for two years after he ceased being
23 employed in his position with DOC, from having a direct beneficial financial interest in a public
24 contract when one of the parties to the contract was DOC, if Mr. Taaffe "authorized" the contract
25 while acting in the capacity previously held as a public official.

26
27 OAR 199-005-0035(6) identifies, as used in ORS 244.047, a public contract is "authorized" by a
28 public official if the public official performed a significant role in the selection of a contractor or
29 the execution of the contract. A significant role can include recommending approval or signing of
30 the contract, including serving on a selection committee or team, or having the final authorizing
31 authority for the contract.

1 Mr. Taaffe has taken the position that his role in the aforementioned contract was "less than
2 significant" based on the premise that he was the member of an "evaluation committee" in March
3 2009, not a member of the "selection committee." If the Commission moves this matter to
4 investigation it would be necessary to clarify these circumstances.

5
6 ORS 244.040(1) prohibited Mr. Taaffe, as a public official, from using or attempting to use his
7 official position or office to obtain financial gain or to avoid financial detriment, if the opportunity
8 for financial gain or avoidance of financial detriment would not otherwise be available but for his
9 holding an official position with DOC.

10
11 If Mr. Taaffe used or attempted to use his public position to create, advance or accept an outside
12 employment opportunity that would not otherwise be available but for holding the official position,
13 it could constitute a gain or an attempt to gain financial benefits or avoid financial detriments
14 prohibited by ORS 244.040(1).

15
16 It appears Mr. Taaffe contends he participated in an open, competitive hiring process while
17 seeking post-public employment. If this matter moves to investigation it would be necessary to
18 clarify these circumstances.

19
20 ORS 244.040(3) prohibited Mr. Taaffe from soliciting or receiving, directly or indirectly, future
21 employment based on any understanding that his vote, official action or judgment as a public
22 official would be influenced by the pledge or promise. Further, ORS 244.040(4) and (5)
23 prohibited Mr. Taaffe from furthering or attempting to further his personal gain through the use of
24 confidential information gained in the course of or by reason of holding a position as a public
25 official or the activities as a public official.

26
27 Although Mr. Taaffe does not appear to address these issues at this time, if this matter moves to
28 investigation it would be necessary to clarify these circumstances.

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1 In brief, Mr. Taaffe would have been met with an actual or potential conflict of interest, as
2 defined in ORS 244.020(1) and ORS 244.020(12), each time he acted in his official capacity as a
3 public official and that action, decision or recommendation would or could have been to the
4 private pecuniary benefit or detriment of himself or a business with which he is associated.

5
6 When met with a conflict of interest, ORS 244.120(1)(c) required Mr. Taaffe on each occasion to
7 notify, in writing his appointing authority of the nature of the conflict of interest and request that
8 the appointing authority dispose of the matter giving rise to the conflict.

9
10 Information available in this preliminary review appears to indicate that Mr. Taaffe may have
11 participated in official actions, decisions or recommendations that could have resulted in financial
12 benefits or avoidance of financial detriments to him. If this matter moves to investigation, it
13 would be necessary to clarify these circumstances.

14
15 There appears to be a substantial objective basis to believe that violations of Oregon
16 Government Ethics law may have occurred and that Mr. Taaffe may have committed such
17 violations.

18
19 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to
20 investigate whether Michael Taaffe may have violated ORS 244.040(1), ORS 244.040(3), ORS
21 244.040(4), ORS 244.040(5), ORS 244.047(2) and ORS 244.120(1)(c) (Motion 4).

22
23 **ASSOCIATED DOCUMENTS:**

- 24 #PR1 Oregon Government Ethics Commission complaint signed by Vicki Gallegos
25 received on 4/26/11.
- 26 #PR2 Copies of selected pages from the Oregon Government Ethics Commission's
27 *Guide for Public Officials*, adopted 10/26/10.
- 28 #PR3 Copy of selected page of an evaluation form titled, "Request for Proposal #3910,
29 TPA for Inmate Off-Site Health Care.
- 30 #PR4 Copies of selected pages of an evaluation form titled, "Request for Proposal
31 #3910, TPA for Inmate Off-Site Health Care.

- 1 #PR5 Copy of selected page of an evaluation form titled, "Request for Proposal #3910,
2 TPA for Inmate Off-Site Health Care.
3 #PR6 Copy of a selected page of a scoring matrix titled, "RFP #3910 – Inmate Off-Site
4 Healthcare."
5 #PR7 Copy of selected pages of an "Award Summary" titled, "TPA for Inmate Off-Site
6 Health Care System."
7 #PR8 Michael Taaffe, letter to Deborah Tuss dated 5/27/11.
8 #PR9 Copies of selected pages from an electronic mail communication of Max Williams,
9 Director, Oregon Department of Corrections dated 5/10/11.

PREPARED BY Deborah M. Tuss 8/19/11
Deborah M. Tuss Date
Investigator

APPROVED BY Ronald A. Bersin 8/22/11
Ronald A. Bersin Date
Executive Director

REVIEWED BY Lynn Rosik 8/19/11
Lynn Rosik Date
Assistant Attorney General