



# Smithsonian Institution

Office of the Inspector General

## REPORT OF INVESTIGATION

---

### SUMMARY

This report addresses allegations that Pilar Frank O'LEARY, the Director of the Smithsonian Latino Center, violated the Smithsonian Standards of Conduct and other Smithsonian policies.

The Smithsonian Standards of Conduct (Smithsonian Directive (SD) 103) require that Smithsonian employees demonstrate loyalty to the Institution and not engage in activities that constitute, or that could give the appearance of, a conflict of interest, such as giving preferential treatment to any person or company. SD 103 § 1.

The Standards of Conduct emphasize that "the primary responsibility rests with each individual employee to be familiar with these standards, to act in accordance with them, and to seek guidance before engaging in any activity that might not be consistent with the principles or specific provisions set forth in these standards." To that end, the Standards also require employees to seek advice "immediately" from an ethics counselor "[i]f any doubt exists as to whether an activity or planned activity violates these standards." SD 103 § 2.

The Trust Personnel Handbook, SD 213 - Chapter 735, also states "Employees should avoid any action, whether or not specifically prohibited, that might result in or create the appearance of using their Smithsonian employment for private gain, misusing Smithsonian property, impeding Smithsonian efficiency or economy, making an official decision outside official channels, or adversely affecting the confidence of any person in the integrity of the Smithsonian Institution."

The evidence gathered in this investigation indicates that on multiple occasions O'LEARY violated these general ethical rules, as well as specific prohibitions on conduct that constitutes or appears to constitute a conflict of interest; on soliciting gifts and accepting gifts from prohibited sources; and on using Smithsonian resources for private gain. She also violated the travel policy, particularly through repeated misuse of her Smithsonian-issued travel card. Finally, she also engaged in other questionable conduct that created an appearance of impropriety and could compromise public confidence in the Smithsonian. (*Exhibit 1*)

---

PREPARED BY: [REDACTED]

CASE NUMBER: [REDACTED]

*Exemption 2*

*This document contains sensitive and confidential information and is not to be distributed or copied without the written permission of the Office of the Inspector General.*

We present the allegations and findings in the following order:

**Background**

**Investigation**

**Violations of Smithsonian Policy**

**Conflicts of Interest**

- Improper Contract with [REDACTED]*
- Lack of Impartiality in Contracting*
- Unauthorized Commitment of SI Funds*

**Gifts from Outside Sources**

- Soliciting and Accepting Gifts from Prohibited Sources*
- Soliciting and Accepting Gifts from Other Sources*
- Accepting Travel Expenses from a For-Profit Source without Clearance*

**Improper Claim for Travel Expenses Not Incurred**

**Travel Policy – Misuse of Travel Card**

- Failure to Pay Travel Card Balance Timely*
- Personal Use of Travel Card*
- Failure to Use Travel Card on Official Travel*

**Personal Use of SI Property and Resources**

- Use of Courier Service*

**Other Questionable Conduct**

**Extravagant Travel and Other Questionable Expenditures**

**Using SI Funds to Move Donated Furniture to Residence**

**BACKGROUND**

Pilar O'LEARY was hired as the Director for the Smithsonian Latino Center (SLC) (formerly the Smithsonian Center for Latino Initiatives) in August 2005. She serves at the discretion of the Secretary and until recently reported to the Deputy Secretary/Chief Operating Officer (she now reports to the Acting Undersecretary for History and Culture). She had previously worked with private corporations, serving as Associate General Counsel for J.P. Morgan and Fannie Mae, and had been involved in various Latino outreach initiatives. She had no prior experience in government or in the non-profit sector. O'LEARY has a law degree and undergraduate degree from Georgetown University.

The Latino Center has the following sources of funds: 401, 402 and 801 trust funds, and two types of federal funds. The federally appropriated funds consist of the S&E (used for salary and expenses) and the Latino Initiative Pool (funds that can be used for programming only). Trust funds were always used for O'LEARY's travel as she is a trust employee. Federally appropriated funds were designated for the contract that was issued to [REDACTED].

During the course of the investigation, the Office of the Inspector General (OIG) interviewed employees from numerous SI units, as well as outside contractors and other individuals, and reviewed and obtained relevant documentation, e-mail correspondence and text messages.

Two OIG Senior Special Agents interviewed O'LEARY at length. They informed her that the U.S. Attorney's office had declined to prosecute and that she was not under criminal investigation. They then advised her of her rights as an employee and her obligation to speak to them and to tell the truth. Thereafter, the agents wrote up her statement, which she signed and swore to after adding some edits. Subsequently, O'LEARY's legal counsel provided an additional declaration on her behalf. O'LEARY's statements are attached to this report immediately following the conclusion.

## INVESTIGATION

The investigation substantiated the following allegations:

### **VIOLATIONS OF SMITHSONIAN POLICY – CONFLICTS OF INTEREST**

*O'LEARY engaged in conflicts of interest and created an appearance of conflicts of interest when she issued a contract to [REDACTED]; when she attempted to issue a sole-source contract to a close friend; and when she made an unauthorized commitment of Institution funds to that friend.*

#### Improper Contract with [REDACTED]

The first rule of the Standards of Conduct prohibits giving preferential treatment to any person. The Standards of Conduct further state that "to avoid a conflict of interest or the appearance of a conflict of interest or of favoritism, a proposed contract with [REDACTED] must be referred by the Office of Contracting to a Smithsonian ethics counselor for review and clearance." SD 103 § 7(g).

O'LEARY violated these rules when she issued a [REDACTED] contract in March 2006 to [REDACTED], [REDACTED], [REDACTED]. She had solicited [REDACTED] as one of three competitors to bid on the project and then selected [REDACTED]. (Exhibit 2) [REDACTED] had advised O'LEARY that she should not hire [REDACTED]. She nonetheless executed the contract without first seeking counsel.

A [REDACTED] discovered this issue when [REDACTED] recognized the [REDACTED] on the purchase order [REDACTED]

██████████. The ██████████ and ██████████, subsequently met with O'LEARY to discuss the issue. Following this meeting on April 19, the contract was cancelled by the Deputy Secretary's Office, and no payments were made.

There is no evidence that O'LEARY notified the Office of Contracting (OCon) that the contractor was ██████████ so that OCon could seek clearance or that she sought advice from an ethics counselor. ██████████ stated that O'LEARY "acted surprised that she couldn't do it" during their meeting after the contract was issued and "heavily implied" that she was not aware of the restrictions.

Sources stated that ██████████ had done some pro bono work for SLC and that O'LEARY made it known she "definitely wanted to pay ██████████" for ██████████ work. O'LEARY submitted \$852.15 in travel receipts<sup>1</sup> for trips ██████████ had made to Washington to work on the project, although the trips dated back to November 2005, before the contract was bid or issued. (Exhibit 3)

In e-mail messages after the contract was cancelled and ██████████ could not get reimbursed for costs ██████████ had incurred, O'LEARY wrote to ██████████, "I only tried to help you" and "You had offered to do this pro bono and I stupidly offered to pay you money to try to help you out." (Exhibit 4)

O'LEARY maintains that ██████████ "was providing ██████████ services pro bono" and that she did not realize ██████████'s "involvement" would be inappropriate. She stated the contract was awarded to ██████████ "and the person who was to do the ██████████, ██████████." However, O'LEARY had declined ██████████'s bid for the project and had awarded the contract solely to ██████████, listing herself as the Contracting Officer's Technical Representative (COTR).<sup>2</sup>

O'LEARY also stated her other employers had employed ██████████, so it did not occur to her that this would be a conflict of interest, and that she had not received any training when she began her employment. However, a senior official would be expected to be familiar with the Standards of Conduct and exercise good judgment in such matters.<sup>3</sup>

---

<sup>1</sup> ██████████ had noted in an e-mail to O'LEARY that ██████████ was submitting \$1477 in travel expenses ██████████ had incurred.

<sup>2</sup> O'LEARY has not received training as a COTR.

<sup>3</sup> We note that ██████████ states ██████████ held a meeting with O'LEARY soon after she started at the Institution as a new unit head, at which time ██████████ told her to read the Standards of Conduct and contact an ethics counselor with any questions. In addition, she received electronic copies of SD 103 on March 20, 2006 and March 21, 2007 from the Office of General Counsel with the annual SI-1085, Confidential Statement of Employment and Financial Interests form she had to complete.

Lack of Impartiality in Contracting

Section 1 of the Standards of Conduct states that “Smithsonian employees must ensure their conduct does not compromise the integrity of, or public confidence in, the Smithsonian Institution [and] must not engage in private or personal activities that might conflict, or appear to conflict, with SI interests ... such as losing the independence to make impartial decisions on the Smithsonian’s behalf or giving preferential treatment to any person or company.”

O’LEARY violated this prohibition against conflicts of interest and the appearance of conflicts of interest when she submitted a sole-source justification for a contract with a friend who had been seeking to do business with the Smithsonian for some time, [REDACTED].<sup>4</sup> O’LEARY and [REDACTED] routinely communicate via phone, email and text-messaging, plan opportunities to travel and socialize, negotiate work that is not officially contracted, and do favors for each other. [REDACTED]

[REDACTED] O’LEARY submitted a sole-source justification for [REDACTED] totaling [REDACTED],<sup>6</sup> a request that she initiated. One of the reasons O’LEARY provided as justification was that [REDACTED] had been “working with the SLC on an informal pro bono basis” and had special knowledge or experience [REDACTED]. (Exhibit 6) OCon<sup>7</sup> advised O’LEARY that such a relationship was not justification for a sole-source.<sup>7</sup>

O’LEARY also stated as a justification [REDACTED]

<sup>4</sup> O’LEARY stated that she received approval from the Deputy Secretary’s Office to use sole-source. However, she was only told that she could submit a sole-source justification to OCon for review. This is not approval but a statement of the procedures for pursuing a sole-source procurement.

<sup>5</sup> [REDACTED]

<sup>6</sup> There were discrepancies related to the total amount for the contract. O’LEARY attempted to increase the amount of the contract without consulting [REDACTED]. These are addressed in the chronology set forth in Exhibit 11.

<sup>7</sup> OCon advised O’LEARY that the SI does not accept pro bono work that is not documented and that any such work needs to be covered by a gift agreement or MOU cleared through OGC.

<sup>8</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OCon advised the OIG that they would hesitate to write a contract or accept a sole-source justification if they knew that an employee was attempting to contract with a close friend because of the appearance of a lack of impartiality. In such instances, OCon would refer the matter to

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

OGC for review by an ethics counselor and not act on any such request until it was either cleared by an OGC ethics counselor or the person involved recused themselves from any involvement in the bidding or selection process.

O'LEARY maintains that her friendship with [REDACTED] would not cause her to give preferential treatment to [REDACTED] company or cause [REDACTED] to expect anything in return from the Smithsonian. A chronology further detailing the circumstances surrounding this sole-source justification and O'LEARY's specific interactions with OCon and the contractor, illustrating the conflict of interest and the appearance of preferential treatment, is attached. (Exhibit 11)

Unauthorized Commitment Without Procurement Authority

One of the "Fourteen Principles of Ethical Conduct for Smithsonian Employees"<sup>12</sup> states that "Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Smithsonian." Only Smithsonian Institution (SI) employees with a delegation of authority from the Director, Office of Contracting, may sign a contract on behalf of the Institution or tell a contractor to begin work or provide goods. A financial obligation made by someone without a delegation of authority for the appropriate dollar amount is an unauthorized commitment.<sup>13</sup>

O'LEARY entered into an unauthorized commitment of Smithsonian funds when she signed a SOW for [REDACTED] without a delegation of authority. [REDACTED]

[REDACTED]

[REDACTED]

<sup>12</sup> These principles are appended to SD 103, the Standards of Conduct.

<sup>13</sup> OCon Form 104 – Ratification of Unauthorized Commitment.

<sup>14</sup> [REDACTED]

O'LEARY is aware that she does not have procurement authority. She stated in her declaration, "I have never had procurement authority or a purchase card. [C]ontractors that we have hired have gone through the Office of Contracting or the Office of the Deputy Secretary" and "Contracts must be approved by the Office of the Deputy Secretary and OCon."<sup>15</sup>

In addition, when O'LEARY contracted with [REDACTED], she had been advised by OCon that the SOW for the sole-source procurement with [REDACTED] would need to be changed, [REDACTED]. O'LEARY never got the final SOW approved by OCon, nor did she revise it to reflect [REDACTED], prior to having it signed. If she would have done so, OCon would have discovered it was the document with the contractor's edits that still contained the elements of [REDACTED]'s work.

[REDACTED]

[REDACTED], OCon notified O'LEARY that she had made an unauthorized commitment to [REDACTED]. OCon advised her of the corrections that needed to be made to the SOW and that the commitment had to be ratified before any further work could be performed. OCon provided her with a Form 104, "Ratification of Unauthorized Commitment" and asked her to complete it. (*Exhibit 14*)

[REDACTED]

[REDACTED], O'LEARY emailed [REDACTED] and OCon and others stating that the contract should be competed and that she is recusing herself from the selection process.<sup>16</sup>

<sup>15</sup> O'LEARY claimed that "OCon approved the Statement of Work and the sole-source justification and the contract was sent to [REDACTED]'s offices." However, she never received an approved SOW or a contract for signature from OCon, nor was the [REDACTED] aware of any such contract.

<sup>16</sup> [REDACTED]

**VIOLATIONS OF SMITHSONIAN POLICY – GIFTS FROM OUTSIDE SOURCES**

*O'LEARY solicited and accepted gifts, primarily tickets to events and concerts, from prohibited sources and from other sources without seeking clearance.*

Soliciting and Accepting Gifts from Prohibited Sources

The Standards of Conduct prohibit employees from soliciting or accepting any gift “that is or appears to be offered because the employee holds a Smithsonian position or may have influence within the Smithsonian.” They also prohibit soliciting or accepting a gift of any value from prohibited sources, namely “any organization that or person who: (1) is seeking official action by the Smithsonian; (2) does business or seeks to do business with the Smithsonian; or (3) has interests that may be substantially affected by performance or non-performance of the employee’s official duties.”<sup>17</sup> SD 103 § 5 (a). Moreover, the Standards prohibit soliciting the offering of a gift.<sup>18</sup> SD 103 § 5 (c).

OGC ethics counselors state that SI employees cannot personally benefit from offers from any source and consider even board members and sponsors to be prohibited sources. They further state that when an invitation to an event is made and accepted on behalf of the SI, it is the SI that decides on the appropriate person to send to the event and that employees, even directors in a fundraising capacity, cannot personally accept the offers without clearance. These rules were implemented by the Institution to protect its integrity, ensure its impartiality, and avoid conflicts of interest or the appearance of conflicts of interest.

O'LEARY has solicited and accepted gifts from prohibited sources – for-profit companies that were doing business with, or seeking to do business with, the Smithsonian and who had interests that could be affected by O'LEARY's official duties.<sup>19</sup> She has solicited complimentary tickets for herself, not for the SLC, to social functions such as concerts, fashion shows, and music awards, sometimes asking for additional tickets for family and friends.

- [REDACTED] - In August 2006, O'LEARY began working on business proposals with [REDACTED] and [REDACTED] of [REDACTED], who

---

<sup>17</sup> The Smithsonian rule parallels the Federal Acquisition Regulation prohibition, 48 CFR § 3.101-2. Employees may receive unsolicited gifts of up to \$50 in value (no more than \$100 aggregate in a calendar year); accept food and refreshments of modest value on infrequent occasions; and accept gifts “when the circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than by the position of the employee.”

<sup>18</sup> In no event may an employee accept a gift in return for being influenced in the performance of an official act.

<sup>19</sup> O'LEARY stated there was “no understanding of return SI business involved or implied” in any of the situations where she received tickets to events. No such understanding is needed to constitute a violation of the gift policies (gifts of any value from prohibited sources or gifts exceeding \$50 in value from other sources).

She tried to negotiate a contract to have [REDACTED], but the agreement was never finalized. Discussions continued about hiring [REDACTED] and about other collaborations through December 2006. On December 7, [REDACTED] asked O'LEARY to "do something together in 07" and O'LEARY responded, "For sure we are doing something in 2007! Let's talk soon." (Exhibit 15) Thus, as of late 2006, [REDACTED] was a prohibited source.<sup>20</sup>

On March 17, O'LEARY received registrations allowing entry to the Latin Billboard Music Conference and Awards show from [REDACTED] in exchange for government hotel rates. [REDACTED] e-mailed her saying, "Hey, if you need some registrations to Billboard, I can get you one or two.... Do you get a good rate at the Four Seasons? Maybe we can make a trade of registrations for a good hotel rate!"<sup>21</sup> O'LEARY responded, "Deal! Let's talk this weekend." On April 4, she directed her staff to make reservations for her as well as for [REDACTED] at the Conrad at the government rate.<sup>22</sup> After the reservations were made, O'LEARY told [REDACTED], "Looks like we will get a rate of \$129 at the Conrad." [REDACTED] later told her, "I saw some photos of the hotel. It looks lovely! Thanks again. I owe you a nice dinner there!" (Exhibit 16) [REDACTED] checked into the hotel on April 23 and was given the government rate of \$129 per night.<sup>23</sup>

O'LEARY sent a message to [REDACTED] from the Latin Billboard awards show saying, "Many thanks, [REDACTED]! You are the best. One q: how do I get one extra ticket?" She sent [REDACTED] another message from the event stating, "[T]hanks again for everything, you are a [REDACTED]! Do you know if the second ticket you gave me which is basically the after party invite with the silver sticker on the back is better than the regular ticket?" (Exhibit 17) While the value of the tickets is irrelevant, as they were obtained from a prohibited source, the cost of this event was \$450 per person.

In June 2007, O'LEARY accepted several [REDACTED] concert tickets from [REDACTED], asking for two for [REDACTED] and four for [REDACTED].<sup>24</sup> (Exhibit 18)

<sup>20</sup> In March 2007, the SLC began negotiating with [REDACTED]

<sup>21</sup> [REDACTED] was in Miami for three nights from April 23-26 to attend the Latin Billboard Music Conference and Awards show, where [REDACTED] were receiving awards.

<sup>22</sup> O'LEARY later advised [REDACTED] that the Four Seasons was unavailable, so they had ended up at the Conrad.

<sup>23</sup> The hotel advised they normally require a government ID to honor the rate and assumed they had failed to obtain one from [REDACTED] at check-in.

<sup>24</sup> E-mails indicate O'LEARY may have asked for an additional four tickets to this concert.

