



LACCD OFFICE OF THE
INSPECTOR GENERAL
INTEGRITY * TRUST * COMMUNICATION

CONFIDENTIAL REPORT

Investigation Report

Allegations of Solicitation by Safety Program Managers



LACCD OFFICE OF THE
INSPECTOR GENERAL

INTEGRITY * TRUST * COMMUNICATION

May 29, 2012

Chancellor Dr. Daniel J. LaVista
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Los Angeles, CA 90017

Chancellor LaVista:

This is the Office of Inspector General's Investigation Report on Allegations of Solicitation by Bond Program Safety Managers.

This Investigation Report addresses whistleblower allegations of coercion and solicitation by safety consultants involved in the solicitation of contractors and subcontractor employees to sell training services for financial gain.

I appreciate the cooperation extended to us during this investigation.

Sincerely,

Christine E. Marez
Inspector General
Los Angeles Community College District

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EXECUTIVE SUMMARY

The Office of Inspector General (“OIG”) investigated whistleblower reports that alleged Bond Program safety consultants were soliciting contractor and subcontractor employees during work hours to sell training services for their own personal financial gain. Whistleblowers further alleged that the individuals named used coercion and the authority of their positions as a means to persuade contractor employees and others to enroll and pay for the safety training classes.

The named consultants, the Safety Program (“BuildSAFE”) Field Manager and two Campus Safety Representatives, are responsible for performing safety oversight duties and ensuring that contractors and subcontractors working on the Bond Program are in compliance with all safety requirements and procedures.

The OIG’s investigation has verified that the safety consultants were involved in the solicitation of contractor employees and other consultants in varying degrees. The OIG obtained eyewitness testimonies that the BuildSAFE Field Manager had solicited several persons during work hours and the performance of safety related duties. Witnesses also reported that he used his position and influence as the BuildSAFE Field Manager in these solicitations. The Campus Safety Representatives were involved in at least one incident of reported solicitation as corroborated by witness testimonies.

To the degree that BuildSAFE Field Manager and/or Campus Safety Representatives were using their positions in performing work for the District to sell training services to contractors and/or subcontractors of the District for their own personal financial gain, such activities are contrary to the cited conflict of interest policy of their employment and are inconsistent, incompatible, and in conflict with their duties to the District.

Based upon the findings of this investigation, the Office of the Inspector General recommends that the District take the appropriate personnel actions to avoid any further improprieties and ensure accountability and integrity in the Bond Program.

ALLEGATIONS

The Office of Inspector General (“OIG”) investigated whistleblower allegations reported in April 2012 that specific Bond Program safety consultants were soliciting contractor and subcontractor employees as well as other Bond Program safety consultants during work hours to sell training services for their own personal financial gain.

Whistleblowers further alleged that the individuals named used coercion and the authority of their positions to persuade contractors and other safety consultant staff to enroll and pay for the training classes.

BACKGROUND

The Los Angeles Community College District (“LACCD”) Bond Safety Program, BuildSAFE, was developed in 2008 by the Bond Program Manager (“PM”), URS, and is managed by consultant staff responsible for ensuring that contractors and subcontractors comply with LACCD Bond Program safety standards during project construction.

The Safety Program includes a program-level BuildSAFE Field Manager who reports directly to the PM and oversees the nine (9) Campus Safety Representatives assigned to the individual LACCD college campuses. The BuildSAFE Field Manager and Campus Safety Representatives are consultants hired through three (3) separate professional services contracts and tasked with performing the duties, including, but not limited to (i) reviewing contractor compliance to the Bond Program safety requirements and procedures, and (ii) ensuring that the contractor’s full-time Safety Representative is certified with the designations required in the LACCD *Specification Section 013150A – Health, Safety & Environmental Requirements*.

Specification Section 013150A, includes requirements for the contractor to have a full-time dedicated Contractor Safety Representative that possesses a current professional designation of one, or more, of the following designations: (1) Construction Health & Safety Technician (CHST); (2) Certified Safety Professional (CSP); or (3) Associate Safety Professional (ASP). The Contractor submits qualifications, proof of certification, and resume of Contractor Safety Representative to the College Project Manager (“CPM”) and the Safety Representative for approval prior to any onsite construction activity.

INVESTIGATION APPROACH

To start the investigation, all documentation relating to the allegation was obtained and reviewed, including the professional services procurement/contract files, e-mails, and other related documentation.

The PM’s senior managers were interviewed to obtain an understanding of the BuildSAFE Program and information regarding the duties, background, and qualifications of safety personnel and specific individuals identified in the whistleblower allegations.

The OIG conducted interviews with whistleblowers and several credible witnesses who have requested to remain anonymous and shall be treated as confidential informants. The OIG

interviewed the BuildSAFE consultants named in the whistleblower allegations who shall be referenced in this report as follows:

- Consultant A¹, BuildSAFE Program Field Manager
- Consultant B, BuildSAFE Campus Safety Representative
- Consultant C, BuildSAFE Campus Safety Representative

FINDINGS

The following section provides detailed and comprehensive accounts and findings of events and information obtained, reviewed and analyzed to support the investigation conclusions and recommendations.

In May 2009, the safety specifications were revised to add the Construction Health & Safety Technician (CHST), (2) Certified Safety Professional (CSP), or (3) Associate Safety Professional (ASP) to the list of specific designations required to be held by the contractor's Safety Representative.

The OIG found that upon being hired in early 2011, Consultant A, disclosed to the PM and to his employer that he was a safety instructor and provided various safety training courses, including a CHST Exam Preparation Course, outside of the hours he worked on the Bond Program. The PM reported to the OIG that they specifically discussed with Consultant A that it would be a conflict of interest to solicit training services to any of the LACCD contractors or Bond Program staff at any time during the performance of his duties as the Safety Program Manager.

On December 8, 2011, Consultant A and Consultant B received an email from their employer stating their firms' "no-tolerance" conflict of interest policy regarding doing business with contractors working on the BuildLACCD program. Both Consultant A and Consultant B acknowledged receipt of the email to their employer on December 9, 2011. The policy clearly stated "*no goods and services are (to be) sold to contractors without prior written consent by (the firm) and the District...*" and "*Training contractors as a side job or with a separate business is considered a conflict of interest and is expressly forbidden... Employees found to be in violation of this policy will be terminated immediately regardless of the impact to the program. The District is fully aware and in support of our policy on this matter.*"

The OIG interviewed the whistleblowers and several witnesses regarding the allegations of solicitation perpetrated by Consultant A, Consultant B, and Consultant C. Six (6) witnesses reported that from December 2011 through February 2012, Consultant A initiated conversations with them to solicit a CHST exam preparation course he was planning to teach. The witnesses reported that Consultant A approached them on campus project sites and told them that they "would need to obtain a CHST certification in order to continue working for LACCD". The witnesses, also reported that Consultant A used his position and authority as the BuildSAFE Field Manager to "strongly persuade" them to take the course.

¹ Consultant A and Consultant B are employed by the same Professional Services firm procured by LACCD to perform safety program related services.

Most of the witnesses told the OIG that they found the solicitation from Consultant A to be a conflict of interest and did not enroll in the class. The OIG obtained documentation that confirms that at least one person solicited by Consultant A paid him directly for enrollment into the CHST Exam Preparation Course that was held on January 7th, 21st, and 28th of 2012 at a location in Orange County. Witnesses reported that Consultant A offered enrollment fees that varied from \$300 to \$695 per person and that he would often negotiate the discount rate of \$300 if someone could not pay the full amount.

Consultant B and Consultant C were also named by whistleblowers and witnesses as soliciting for the CHST Exam Prep training course, although to a lesser degree than Consultant A. The witnesses claimed that Consultant B was working with Consultant A to solicit contractor employees and collect payments. The OIG confirmed that Consultant B was one of the instructors who taught the January 2012 class with Consultant A.

During his interview with the OIG, Consultant A denied all allegations of solicitation and claimed that he never approached anyone on the program regarding the CHST Exam Prep class. The OIG found that Consultant A was not forthcoming in his responses to questions regarding specific instances of solicitation as reported by several eyewitnesses. Additionally, Consultant B claimed that he had no knowledge of the solicitation of contractors nor had he discussed the issue with Consultant A. However, the OIG found that Consultant A and Consultant B did, in fact, discuss the specifics of the OIG case in an attempt to ensure they did not incriminate themselves.

Consultant C also denied his involvement in any solicitation; though he admitted conducting training classes for contractors who were part of the LACCD program, however, he claimed that they approached him.

LEGAL ANALYSIS

The District contracts with service providers and relies upon the service providers to maintain and enforce employment policies to protect the integrity of the LACCDBuild program, including those prohibiting conflicts of interest in the work performed for the District. Here, Consultant A and Consultant B were subject to the following employment conflict of interest policy: “[N]o goods and services are (to be) sold to contractors without prior written consent by (the firm) and the District . . . Training contractors as a side job or with a separate business is considered a conflict of interest and is expressly forbidden... Employees found to be in violation of this policy will be terminated immediately regardless of the impact to the program. The District is fully aware and in support of our policy on this matter.”

This provision is consistent with Government Code Section 1126, which prohibits an employee from engaging in any employment, activity, or enterprise for compensation that is inconsistent, incompatible, in conflict with, or inimical to his or her official duties or the duties, functions or responsibilities of his or her appointing authority or employing agency. This prohibition applies to officers and employees of local agencies as well as to temporary consultants hired as independent contractors. Conflict-of-interest laws and policies are grounded on the notion that individuals performing work for the public benefit owe paramount loyalty to the public, and that such individuals may not use the prestige or influence of the position for private gain.

CONCLUSION

The OIG concludes that the allegations of solicitation by specific BuildSAFE managers are valid as corroborated by witness testimonies and signed witness declarations. The OIG finds that Consultant A solicited several persons during work hours and the performance of safety related duties and further finds that he used his position and influence as BuildSAFE Field Manager in these solicitations. The OIG finds that Consultant B and Consultant C were involved in at least one incident of reported solicitation as corroborated by witness testimonies.

To the degree that BuildSAFE Field Manager and/or Campus Safety Representatives were using their positions in performing work for the District to sell training services to contractors and/or subcontractors of the District for their own personal financial gain, such activities are contrary to the cited conflict of interest policy of their employer and are inconsistent, incompatible and in conflict with their duties to the District.

Based upon the findings of this investigation, the Office of the Inspector General recommends that the District take the appropriate personnel actions to avoid any further improprieties and ensure accountability and integrity in the Bond Program.

REPORT DISTRIBUTION

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