

SACRAMENTO AREA SEWER DISTRICT

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August 23, 2012

Honorable Laurie Earle, Presiding Judge
Sacramento Superior Court
720 Ninth Street, Dept. 47
Sacramento, CA 95814

Subject: **Sacramento Area Sewer District (SASD) Response to
Grand Jury Investigation dated June 28, 2012**

Board of Directors

Representing:

County of Sacramento
City of Citrus Heights
City of Elk Grove
City of Folsom
City of Rancho Cordova
City of Sacramento

Stan Dean
District Engineer

Christoph Dobson
Director of Operations

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Dear Honorable Judge Earle:

This letter contains the response to the Grand Jury investigation of SASD dated June 28, 2012. We appreciate the time, effort, and diligence of the members of the Grand Jury, and are pleased the Grand Jury report finds that SASD has conducted business in an appropriate manner.

The Grand Jury made several recommendations that it believes would further ensure that SASD remains poised to maintain its high level of service to customers, as well as its ethical standards. In this context, SASD has carefully reviewed the Grand Jury findings and recommendations. While SASD appreciates the recommendations, some of the recommendations are problematic for a number of reasons, including lack of legal ability to implement the recommendations and the significant administrative burden imposed by the recommendations with little added value to the organization and the public it serves.

Findings

F.1 The SASD acted swiftly and responsibly upon learning of allegations of employee misconduct. Further, the District Board adopted a comprehensive District Ethics Policy recommended by SASD.

We agree with the finding.

F.2 The District proactively initiated a series of professionally facilitated mediations between SASD and commercial plumbing business owners who had concerns about the contract bidding process. The first such meeting, conducted by the Center of Collaborative Policy at Sacramento State University, took place on July 7, 2011.

We agree with the finding. Furthermore, we are continuing efforts through facilitated meetings to resolve any remaining areas of concern and to maintain an ongoing productive relationship with the commercial plumbers:

F.3 The District has, since 2009, appropriately asserted more direct oversight on matters related to BIS claims.

We agree with the finding.

F.4 Review of the District contracting process for professional services such as "Rodding" and "Cleaning" of sewer lines indicates a need for better oversight of approved contracts by the District contracting officer. In this case multiple contracts for a single RFP (in one instance as many as eight contractors with eight similar contracts) creates confusion and inefficiency. The practice of breaking a contract into segments to spread the work among several contractors, depending on their location in the district, basically ignores the rule of awarding work to the lowest qualified bidder. Similarly, the contracting officer does not receive regular informational reports relative to the contractors' compliance with the terms of the contract.

We do not agree with the finding. The subject maintenance work is low unit cost, high frequency work spread around the District's 270 square mile service area, and it recurs at a variety of different time intervals. The District's practice of maintaining multiple contracts for rodding and cleaning was designed to minimize costs, improve customer service, and result in projects of a manageable size. Costs are minimized by making sure that low bidders are awarded the work and breaking the work into packages that can be done by a large number of potential contractors, thereby encouraging competition. Customer service is improved with the use of multiple contractors because the capability to respond quickly in times of heavy workload is increased with multiple contracts, and affected property can be more quickly restored to its original condition. The District's management, project staff, and Purchasing (Contracting) Officer have found the existing approach to be a logical and effective means of supplementing the work completed by District field crews.

SASD staff explained the contracting process during testimony to the Grand Jury. SASD is concerned, however, that this process was not completely understood. To better clarify and respond to the Grand Jury's concerns, SASD will further explain the process used to contract for rodding and cleaning services. The contracting process works as follows:

1. Publicly advertise for proposers by issuing a Request-for-Proposals for the general types of work anticipated.
2. Review proposals and establish a list of qualified contractors, and prepare contracts for each of the qualified contractors with the term of 1-2 years.
3. When the need for work arises, prepare Request-for-Bids packages, including bundled work orders and detailed scope of work.
4. Solicit for bids from multiple qualified contractors with whom the District already has contracts and award work orders to the lowest bidder.
5. Repeat steps 3 and 4 when additional work is required to ensure competitive bidding and timely completion of work orders.
6. Periodically repeat steps 1 and 2 to update the list of qualified contractors.

The current list includes eight contractors, and as described above, the procedure is a competitive selection process that complies with District policy and practices and applicable contracting law. The Purchasing Officer is involved in the administrative process of developing requests for proposals, requests for bids, the award of contracts, and preparation of contracts. The Purchasing Officer, through computerized access, monitors the administration and purchase order activity of the contracts, as well as the competitive bidding process. Engineering and maintenance staff work with the Purchasing Officer to define work needs, evaluate contractor qualifications, and monitor the compliance with the terms of the contract .

It should be noted that the rodding and cleaning work is actually defined as "sewerage maintenance or repair" work, not "professional services," under the District's Procurement Policy. Contracting laws, policies, and procedures are distinctly different for these different types of work.

F.5 The District currently has no policy regarding contracts being awarded to employees who have recently separated from the District.

We agree with the finding.

Recommendations

R.1 The District Ethics Policy should be distributed, read, and signed by every District employee on an annual basis. Reviews of guidelines and principles should be conducted with staff periodically. Each incident of review should be documented, signed by the reviewer, and placed in the employee's personnel file. If not now assigned, the District needs to have an ethics officer assigned to monitor this effort on an ongoing basis. Additionally, the District needs to submit an Annual Ethics Report to the District Board.

We agree that the District Ethics Policy should be read and signed by every County employee that works for the District. However, we feel a frequency of every year is unnecessary and a longer interval reflects a better balance between benefits and costs. SASD staff and Sacramento Regional County Sanitation District (SRCSD) staff are both under a common organizational structure, and in total there are over 700 people. Assuming that it takes about an hour per person to administer the distribution, collection, review, filing, and tracking, the costs in staff time could exceed \$50,000 each cycle. The District feels that this cost would outweigh the benefit of annual review.

We agree that reviews of the Ethics Policy should be conducted periodically and that records of such review should be kept. Therefore, by December 31, 2012, SASD will prepare and implement a procedure that requires all employees to review and sign the Ethics Policy upon entering service with the District, upon any significant change in the Ethics Policy, and no longer than a maximum period of five years. Signed copies will be kept in each employee's file. The procedure will also require the contents of the policy to be reviewed at each event. The review may take the form of a one-on-one conversation between the supervisor and employee, supervisor reviews in group settings, or training coordinated by the District's training office. Records of the reviews / training will be kept in either the employees' personnel files or in the District's Learning Management System software.

We agree that verifying compliance with the review, signing, and training surrounding the Ethics Policy needs to be an assigned responsibility to an individual. The title of the person handling this responsibility is immaterial as long as the function is performed. To that end, by December 31, 2012, the District will make an assignment in writing to a Manager with the responsibility to make sure that that the procedure discussed above is followed. This assignment will include an annual review of compliance with the review, signing, and training requirements. The results of the review will be submitted to the District Engineer.

We agree that the Board of Directors has a role in the ethics program, and the most appropriate role is setting the policy and delegating implementation to District staff. In the past, the District Board has approved the contents of the Ethics Policy, and it is intended that it would approve any significant amendments to the policy. However, we do not agree that it is necessary to provide the District Board with an annual ethics report. Such a report would be limited to statistics on how many employees signed the policy and received training which would be relatively meaningless at that level. Furthermore, it is not legally permissible to discuss any personnel and confidential personnel matters in a publically available report to the District Board.

It is important to note that a critical aspect of developing and maintaining high ethical standards is diligently reviewing real situations that arise over time and taking corrective action such as discipline when appropriate. To protect the rights of employees in confidential matters, this element of assuring high ethical standards needs to reside within the District's management and supervision chain of command and human resources staff.

R.2 The District should enact provisions to prohibit the awarding of District contract(s) to any past employee for a period of one year subsequent to their date of separation from the District, eliminating the potential for unfair competition.

The District does not agree with this recommendation. In certain circumstances, there are laws in place that limit employees' rights after separating from public service. For example, State law pertaining to retired annuitants prohibits returning to service until after a certain period of time, and limits the number of hours that can be worked in a year. District officials are covered by the provisions of the Political Reform Act and must follow that act in conducting themselves in their capacity as District staff. Similarly, the provisions of Government Code section 1090 apply to District employees, preventing any employee from being financially interested in any contract made by them in their official capacity. These state laws sufficiently protect the public from unfair competition or advantage by SASD employees.

The District issues many different types of contracts including contracts for construction services, professional services (such as engineers and architects), sewerage maintenance and repair, and acquisition of general goods and services. Each of these types of contracts has their own purchasing laws, regulations, and policies. For example, construction contracts for public works of improvements must be openly advertised for bids and awarded to the lowest responsive responsible bidder. In this case, the low bid gets the work unless the proposal is not responsive or the bidder can be shown to be not responsible. Showing that a bidder is not responsible is a stringent test, and the fact of whether the bidder was a past employee or has a past District employee on their staff would not be relevant to the determination. Another example is contracts for professional services. In this case, the law requires that selection of the person or firm to do the work must be based on

qualifications and experience. Once the selection is made the next step is to enter negotiations for price. The simple fact that a proposer is a past employee or the proposer has a past employee on their staff would not be sufficient cause to state that the proposer did not have adequate qualifications and experience.

While having past experience with the District may seem like an unfair advantage in competing for work, it is not appropriate to punish that person for their knowledge and ability to perform. It must be recognized that obtaining the best service and price is a core value that must be followed for public agencies to serve the public interest.

In summary, the District cannot override contracting laws and regulations to avoid perceptions of favoritism. Rather the District must follow contracting laws in a methodical, consistent, and unprejudiced manner. In many cases these laws were enacted to combat the type of advantages that the Grand Jury is concerned with in this case.

R.3 The District contracting officer must be more involved in monitoring contract procedures, performance and compliance, particularly for professional services contracts.

As stated in the response to finding F.4, it is understood that the recommendation is actually referring to rodding and cleaning work which is defined as sewerage maintenance or repair work, not professional services.

The District does not agree with the recommendation. As stated in the response to Finding F4, the District Purchasing Officer is heavily involved in the process of developing and administering contracts for rodding and cleaning work. The District believes that additional involvement by the Purchasing Officer is not necessary or beneficial.

It should be noted that the recommendation is vague and in compiling this response it would have been more helpful to know exactly and specifically what problems and objectives are in need of correction by "more involvement." The District is certainly open to improving its contracting processes. However, increased involvement comes with increased costs to the District and its ratepayers, and the District must not spend money without clear value.

Again, we appreciate the work of the Grand Jury, and substantially agree with the findings and recommendations. We plan to implement certain recommendations to improve our ability to assure high ethical standards. If you would like to discuss our response, please call me at (916) 875-9101.

Sincerely,



Stan Dean
District Engineer
Sacramento Area Sewer District

cc Julie Valverde, Director of Finance, County of Sacramento
Becky Castenada, Grand Jury Coordinator