

# INVESTIGATIONS AND REPORTS

## Sacramento Area Sewer District

### SUMMARY

The Sacramento County Grand Jury received a complaint alleging irregularities in the competitive bidding process for sewer and related repair jobs serviced by the Sacramento Area Sewer District (SASD). Specifically, it was alleged a District employee provided low bid information to a bidder. Also included in the complaint were allegations that some District employees had solicited work for plumbing businesses owned by themselves, or associates, while on District time. Further, the complaint alleged the District was paying for unsubstantiated damages to residents' homes for Backup into Structure (BIS) claims for services performed for the District by Sacramento County's contracted insurance company.

### BACKGROUND

The SASD, formed in 1978, provides service to over one million people in the Sacramento region, including unincorporated Sacramento County, the cities of Citrus Heights, Rancho Cordova, and Elk Grove, as well as portions of Folsom and Sacramento. SASD is governed by a 10 member Board of Directors (Board) that represents the cities and County of Sacramento. The Board meets twice monthly. Although an independent Special District, some of its functions and staffing are managed through cooperative agreements with the County of Sacramento.

Among its functions, the SASD advises residents to call the District if they experience a BIS. A District employee will take basic information from the caller, and then dispatch District employees to assess the problem. Usually, a SASD staffer called a "pre-checker" determines whether the problem lies with the District sewer lines, or with the property owner's sewer lines. If the pre-checker determines the District has responsibility, personnel will be dispatched to resolve the problem. If the District-caused BIS has resulted in damage to the resident's home, the pre-checker will contact the District's contract insurance company to repair the damage to the resident's home or personal property.

### ISSUES

1. Did any District employee provide low bid information to any bidders for District contracts?
2. Did District employees solicit business for themselves or other business entities while working for the District? Did this result in unfair competition to commercial plumbing businesses?
3. Did the District pay too much for damages to residential property, or otherwise over compensate contractors for repairs?

## **METHOD OF INVESTIGATION**

1. Over a dozen witnesses were interviewed and/or testified before the Grand Jury, including several complainants, numerous current and former District employees, County Counsel staff, Board of Supervisors staff, and Sacramento County Sheriff's Department staff.
2. Hundreds of pages of documents were reviewed and analyzed including Requests For Proposals (RFP's), service agreements, minutes for SASD meetings, reports of an independent investigation conducted by a private investigator, and dozens of emails generated during the normal course of SASD business, including the District's handling of complaints and allegations.

## **STATEMENT OF FACTS**

1. Did any District employee provide low bid information to any bidders for District contracts?

One witness testified he personally overheard a telephone conversation between a District employee and a bidder (a former District employee) for a District contract. Based on this conversation, the witness concluded the contractor had been given inside information about a contract, enabling the contractor to submit the low bid, and thus be awarded the contract. No supporting or corroborative information or documentation was provided for the telephone conversation, which to the best of the witness's recollection occurred 2-3 years ago. No other evidence was provided to support this claim.

Though it lacked supporting evidence, given the serious nature of the allegation, the Grand Jury sought to determine whether, or if, the District, or any District employees, could have provided such information to a potential bidder.

To that end, Grand Jury representatives interviewed District staff responsible for overseeing the bid process through August 2011, as well as the person currently assigned to that task. According to their statements and testimony, the RFP's were generally advertised on the SASD website. The District would send further notices or addendums to any bidders who had expressed an interest. The ensuing bids would be sealed and secured until opened publicly on the date and time specified, usually on a Friday at 3:00 p.m. Nothing unusual or remarkable was noted by the Grand Jury regarding that process.

One witness specifically mentioned that a specific District employee had allegedly provided contractor information regarding a pending low bid. The Grand Jury subpoenaed the named District employee who, under oath, denied ever giving low bid information to the bidder identified by the witness, or any other bidders. Additional testimony elicited from the employee established that it would not be unusual to speak or otherwise communicate with bidders once a contract was awarded.

The Grand Jury also subpoenaed the bidder who allegedly had conversed with that District employee regarding low bid information. The bidder was asked, under oath, if low bid information was ever received. The bidder denied ever receiving any such information from the District employee mentioned, or any District employee.

A witness, as well as a complainant, also alleged one bidder (a former District employee) was receiving low bid information because he was "friends" with numerous District employees.

No evidence could be found to support any of these allegations.

**2. Did District employees solicit business for themselves or other business entities while working for the District? Did this result in unfair competition to commercial plumbing businesses?**

The Grand Jury found there was evidence to support some of these allegations. For the most part, the actions by the employees which gave rise to the allegations took place in 2008. The Grand Jury found that, upon learning of the allegations, the District took immediate steps to investigate, including dedicating hundreds of staff hours to meet with the complainants as well as hiring a private investigator to do follow up. As a result of the District's investigations, five District employees were disciplined. The sanctions ranged from a Counseling Memo to the termination of one of the employees. Additionally, one District employee was prosecuted and subsequently convicted of a misdemeanor Business & Professions Code violation.

On May 27, 2009, the Board adopted Resolution No. SD-0051, a District Ethics Policy. The stated purpose was "To establish a policy for employees regarding ethical conduct on and off the job, where there is a relationship between the off-duty conduct and the individual's position with Sacramento County or SASD, to assist employees in determining unethical behavior including conflicts of interest."

Along with guiding principles such as "Personal Responsibility" and "Standards of Behavior," the policy provided specific practical scenarios providing appropriate professional and ethical responses to situations District employees may encounter both on and off duty.

As stated in Resolution No. SD-0051, the District "...met and conferred with the recognized employee labor organizations and they have concurred with the [attached] District Ethics Policy."

No credible evidence was found to suggest any similar ethical violations subsequent to the disciplinary actions being taken. It appeared to the Grand Jury the District had acted appropriately.

**3. Did the District pay too much for damages to residents' property, or otherwise over compensate contractors for repairs?**

As in the above second allegation, these allegations were based on events that seemed to have occurred in 2008, or earlier. Though the information was dated and incomplete, given the serious nature of the allegations, an effort was made to investigate further.

One of the complainants provided three residential addresses which the complainant believed would support allegations of overcompensation to residents. Files and documents related to these addresses were requested from the District and reviewed by members of the Grand Jury. For two of the addresses, the repairs/compensation took place in 2007. Regarding the documentation

found on the two addresses, information about repairs compensation dating back five years was not considered timely, and the ability to determine whether the expenditures were reasonable, was not possible. No information was found on the third address.

From 1997 through 2009, the District received BIS claims management services through an insurance company contracted by Sacramento County. However, a memo dated March 11, 2009, to the Board of Supervisors (BOS) from the SASD stated, in part, "District has generally been pleased with County's and [contractor insurance company's] performance, staff has recognized there is an opportunity to optimize efficiency, customer service, and accountability by bringing the claims management function under more direct control of District management."

Through the competitive bidding process, a new insurance company was awarded the contract in 2009. A Board report dated August 26, 2009, stated since the new contractor's services had been utilized, the "District has seen a dramatic decrease in the dollars paid on claims and has realized significant operational efficiencies and reductions in costs paid to service providers, restoration contractors, environmental lab services and claimants."

Almost \$3 million dollars had been saved from January through November 2009, in comparison to similar claims paid to the previous contractor in 2008. Based on a review of that report and other documents, as well as interviews and testimony from District employees, it appeared to the Grand Jury that the District has responsibly addressed cost efficiency matters as related to BIS claims.

One of the complainants also testified that the matter of overcompensation/unfair compensation had been brought to the attention of the Sacramento County Sheriff's Department.

In review of this allegation, members of the Grand Jury became aware of the significance of this case as it was assigned to the Special Investigations Unit of the Sheriff's Department who investigated the allegations. The Detective assigned to the case found the allegations to be without merit, and closed the case with the approval of his supervisor.

## **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.
- 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 for Collaborative Policy at Sacramento State University, took place on July 7, 2011.
- F.3** The District has, since 2009, appropriately asserted more direct oversight on matters related to BIS claims.
- 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.

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

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

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

### **Request for Requirements**

**Penal Code section 933.05(f) require that specific responses to indicated finding and recommendations contained in this report be submitted to the presiding Judge of the Sacramento County Superior Court by August 28, 2012.**

**From:**

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**Mail or hand-deliver a hard copy of the response to:**

Hon. Laurie Earl, Presiding Judge  
Sacramento County Superior Court  
720 9<sup>th</sup> Street, Department 47  
Sacramento, CA 96814

In addition, email the response to Rebecca Castaneda, Grand Jury Coordinator, at [castanb@saccourt.com](mailto:castanb@saccourt.com)