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Board of Trustees, March 19, 2019 Agenda Item 6.3

Following the public posting of the agenda of the February 19, 2018 Board of Trustees meeting the District and Board of Trustees received an email from a prior District employee which alleged potential conflict of interest in the hiring process of Program/Construction Management Administrative Assistant staffing for Chabot College. The email prompted District Staff and the Interim Chancellor to pull the item from the consent agenda and perform additional review and investigation of the hiring recommendation. Following the February 19<sup>th</sup> meeting the District contracted with The Public Agency Law Group to perform an investigation into the alleged conflicts and to provide a recommendation to the District prior to the request for Board approval or denial of the action.

**Executive Summary**

The District Staff Report to the Feb 19, 2019 BOT accompanying Agenda Items 6.4 recommended award of a Professional Services Agreement to Vanir Construction Management, Inc. ("Vanir") for administrative/coordinator personnel supporting Measure A projects at Chabot College ("Chabot Admin Support Agreement"). The prior employee email asserts that the recommendation for award of the Chabot Admin Support Agreement is tainted by a potential conflict of interest arising out of the asserted participation of a District employee, in the selection process for award of the Chabot Admin Support Agreement. At the time of District staff consideration of proposals for award of the Chabot Admin Support Agreement, District employee's spouse was an employee of the selected vendor.

Based on the investigation conducted to date, it does not appear that underlying facts support the conflict of interest assertions made in the prior employee email. Notwithstanding, current employee's marriage to a vendor employee at the time of District consideration of proposals for award of the Chabot Admin Support Agreement, the alleged current employee did not participate in the specific evaluations resulting in recommendation for award of the Chabot Admin Support Agreement to the vendor. Award of the Chabot Admin Support Agreement to the vendor in accordance with the District staff recommendation accompanying BOT Feb 19, 2019 Agenda Item 6.4 is not affected by the spousal relationship of current employee and a vendor employee. Nevertheless, as noted in the Recommendations section of this memorandum, the District should implement measures to avoid potential or actual conflicts arising out any district employee relationship with a vendor employee, manager or ownership personnel.

**Background**

The District issued RFQ C-18 in January and February 2018 to establish a pool of qualified Program/Construction Management Firms to support the Measure A Capital Improvement Bond Projects. Upon conclusion of the RFQ process all submitting firms were determined to be qualified and included in the pool of vendor to provide services for Measure A. The manner in which the CM Pool was established eliminates any potential conflicts based on vendor's being included in the CM Pool and current employee's relationships to a vendor employee. The inclusion of all submitting firms precludes the possibility that vendor's inclusion in the CM Pool was affected any participation of current employee' in developing RFQ C-18 or reviewing RFQ C-18 responses while in a spousal relationship to a vendor employee, manager or ownership personnel.

In January 2019 the District issued RFQ C-18.3 to the CM Pool and received six (6) responses (Attachment C). All of the firms submitting a response to RFQ C-18.3 were invited to participate in the interviews. The prior employee' email alleged that a current employee with spousal relationship with a vendor employee participated in the selection process which could be a violation of Government Code §4529.12. Notwithstanding assertions in prior employee's email, the alleged current employee did not participate in evaluation of the CM firms responding to RFQ C-18.3. The investigation did not uncover evidence supporting the prior employee email assertion that current employee with spousal relationship participated in the selection of the vendor through RFQ C-18.3.

### **CM Services Procurement**

The District's procurement of CM services for is subject to Government Code §4529.12:

“All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which ***prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract***, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities”.

In light of the inclusion of all firms responding to RFQ C-18 in the CM Pool, any potential violation of the Section 4529.12 limitations did not affect inclusion of the vendor in the CM Pool.

The conflicts of interest prohibitions described in the prior employee' email are codified in Government Code §1090:

- (a) Members of the Legislature, state, county, district, judicial district, and city officers or employees ***shall not be financially interested in any contract made by them in their official capacity***, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
- (b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).
- (c) As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

All employees who manage vendors or have the responsibility to negotiate contracts with vendors as a District employee, are subject to the limitations of Section 1090. The alleged current employee with spousal relationship to a vendor employee and the conduct to engaged in relating to vendor proposals for District contracts or in administering vendor contracts with the District raises issues of compliance with Section 1090. The prior employee email and the limited investigation did not assess any current employee employment status at District vendors. This memorandum assumes that between 2018 and the present, the alleged employee had a spouse who was an employee of a vendor employee, serving as a project manager without any management authority or ownership interest with managing/directing authority.

With the size and scope of the Construction Management organizations and any current

employee's spousal relationship with a vendor's non-management employee status, any potential financial interest of current employees in the vendor contracts with the District or with any ensuing contract under RFQ C-18.3 awarded to vendors by the Board would be subject to the "remote interests" exception.

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article ***if the officer has only a remote interest in the contract*** and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

## **Providing District facilities and purchasing staff with ethics and Recommendations**

### **Award of RFQ C-18.3 Contract.**

The BOT can take action awarding the RFQ C-18.3 Contract to Vanir. The alleged employee did not participate in evaluation of Vanir's RFQ C-18.3 proposal, the current employee did not score the Vanir RFQ C-18.3 response or the response of any other firm to RFQ C-18.3 and the current employee was not part of the District Staff which made the recommendation for award of the RFQ C-18.3 Contract to Vanir. Vanir was invited to submit an RFQ C-18.3 proposal as a CM included in the CM Pool. Since all firms submitting a response to RFQ C-18, including Vanir, were included in the CM Pool, any participation of the alleged current employee in development of RFQ C-18 or evaluation of RFQ C-18 responses was immaterial to and did not affect the inclusion of Vanir in the CM Pool. The recommendation for award of the RFQ C-18.3 contract to Vanir was based solely on RFQ C-18.3 evaluations and scoring of responses to RFQ C-18.3; the alleged current employee did not participate in evaluation or scoring of RFQ C-18.3 responses.

In the interest of openness and transparency, the Board of Trustees is being informed prior to the award of Contract of the RFQ C-18.3 the following: The Board of Trustees is being informed of the receipt of a prior employee email which alleges conflict of interest for the award of contract; The District contracted with Public Agency Law Group to perform an investigation of the allegations and that the investigator concluded that the alleged employee did not evaluate or score the RFQ C-18.3 responses, therefore, the District Staff recommendation is not tainted by conflicts of interest; The Board of Trustees is also being informed that the prior employee email's alleged conflicts of interest has prompted additional training be provided to all District staff to recognize and avoid conflicts of interest, including (i) mandatory disclosures of relationships with firms or employees, officers or equity owners of firms submitting proposals to the District to provide work, labor, materials or services; and (ii) mandatory recusal from participating in any matter for which there may be an actual or potential conflict of interest or which might give rise to an appearance of impropriety, unless identified as exempt as noted previously by the Chancellor.