



# Washington State Auditor's Office

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## Whistleblower Investigation Report Wenatchee Valley College

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April 21, 2016

Phil Rasmussen, Board Chair  
Wenatchee Valley College

### Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 15-038 at the Wenatchee Valley College.

The State Auditor's Office received an assertion of improper governmental activity at the College. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

JAN M. JUTTE, CPA, CGFM  
DEPUTY STATE AUDITOR  
OLYMPIA, WA

cc: Governor Jay Inslee  
Reagan Bellamy, Human Resources Executive Director  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jacque Hawkins-Jones, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and results

Our Office received a whistleblower complaint asserting the president of Wenatchee Valley College (Subject 1) and vice president of administrative services (Subject 2) at Wenatchee Valley College (College) mismanaged capital projects by failing to ensure public works contracting laws were followed.

We found:

- No reasonable cause to believe Subject 1 violated state public works contracting laws.
- Reasonable cause to believe Subject 2 mismanaged her responsibilities when she allowed the College to proceed with construction projects contrary to state public works contracting laws. She also instructed staff to continue construction of a building after she was told the project was in violation of law.

## Background

Public works laws require community colleges to competitively bid projects when the estimated cost exceeds \$90,000. The contract is awarded to the lowest bidder. According to state law (RCW 43.19.450), in the construction, renovation or repair of a state facility, the Department of Enterprise Services (Department) Engineering and Architectural Services division must:

- (1) Prepare cost estimates and technical information to accompany the capital budget and prepare or contract for plans and specifications for new construction and major repairs and alterations to state facilities.
- (2) Contract for professional architectural, engineering, and related services for the design of new state facilities and major repair or alterations to existing state facilities.
- (3) Provide contract administration for new construction and the repair and alteration of existing state facilities.
- (4) In accordance with the public works laws, contract on behalf of the state for the new construction and major repair or alteration of state facilities.

The Department offers these services to its clients to assist in the development of economical and low-cost facilities, as well as ensuring its clients are following state public works contracting laws. The Department may delegate any or all of its authority to any agency that meets the required terms and conditions.

## About the Investigation

We examined emails, contracting documents and invoices for three capital projects the College was in the process of completing or had completed between April 1, 2014 and April 30, 2015; the Omak building, a storage building and four kiosks.

Subject 2's job duties include supervising the Director of Facilities and Operations (Director) and the overall function of that department. From December 19, 2014 through the middle of March 2015, after the Director left the College, Subject 2 acted as the Interim Director of Facilities and Operations. As president of the College, Subject 1 directly supervises Subject 2.

### Omak Building

The College has two campus locations; one in Wenatchee and one in Omak. The student resource building in Omak was located in an old house that was no longer sufficient for the College. In December 2013, the College, in conjunction with the Department, contracted with an architectural firm to provide construction options and quotes. The three options presented by the firm were: replace the building entirely, renovate the building, or renovate the building and add an addition to expand its current footprint.

Subject 2 told us when she met with the Director to discuss the quotes from the architectural company, they realized the options were out of their price range. She said the Director mentioned he had spoken with colleagues from school districts about the use of portable buildings and the ease of using a purchasing cooperative (co-op). The Director told her the College had a pre-existing contract with a co-op it had used in the past for smaller projects.

Both Subject 1 and Subject 2 told us the Director worked with the co-op to obtain a quote for the project from a subcontractor. Subject 2 said the subcontractor's quote was the only viable option they had and she assumed the Director had spoken with the Department about using the co-op.

We interviewed Department representatives who confirmed they had not been contacted by the Director. According to the Department representatives, neither the College nor the Director had the authority to enter into an agreement with the co-op.

In an email dated May 7, 2014, from the Director to Subject 2, the Director advised he had made a verbal commitment with the subcontractor, a modular manufacturing company, to construct a new building at a cost of \$806,000.

According to the original agreement with the co-op, the quote did not include the costs of demolition of the old building or the costs of site preparation. The Director told us there were so many hazardous issues with the old building they agreed to allow the construction of the modular building to begin before the College had firmed up plans for demolition. He said this was the only way to stay on schedule. The construction of the building was completed on October 13, 2014.

On December 1, 2014, the Director signed a change order for \$297,000 for the demolition of the old building and site preparation. The Director told us Subject 1 and Subject 2 gave him signing authority over projects within his department. Neither subject recalled delegating that authority to the Director; both said the Director told them the Department had delegated the authority to him. They later found this was not true. Subject 2 said confusion over this project may have occurred because they did not completely understand what requirements had to be met in order to receive delegated authority.

We found the Director had started the process to receive a higher delegated project authority from the Department – from \$35,000 to \$300,000. In order to get this higher delegated authority the Director had to participate in contract training through the Department and provide the Department a list of College projects for which he was responsible. The Director did not submit the list and therefore was not awarded the higher delegated authority. When asked why he did not provide the list, the Director said he understood the authority was to be granted to the College and not to him individually; because he was looking for employment elsewhere he did not think he should submit a list that was specific to him. Subject 2 said she asked the Director to submit the list. Department representatives said the delegated authority would have been granted exclusively to the Director as the project manager for the College.

Although the Director told us he believed the delegated authority was for the College and not specific to him, we found an email sent in November 2014 between the Director and Subject 2 in which he advised that if he leaves the College it has no delegated authority. According to the Department, because the Director did not complete the training for the higher delegated authority he was not in a position to approve the \$297,000 change order; no one at the College had authority to approve it.

College leadership expected to have the new building completed and ready for students in September 2014. Due to unexpected permit issues, prolonged demolition and other delays, the building was not completed until May 1, 2015. As of February 2016, the College had spent more than \$1.14 million dollars on the new building.

Subject 1 said he was kept apprised of the budget and overall progress of the building by Subject 2, but not the details of the project. He was aware the Director was the person who proposed using the co-op, and asked Subject 2 for the budget and scope of work details, but it changed every couple of months. He said there was a lot of miscommunication on the project; staff and students were misplaced for quite some time and the College was way over the original budget, but he was not aware they were out of compliance with the law.

Subject 2 said she ensured Subject 1 was kept in the loop, but did not share every detail of the project with him. She said it was her responsibility to manage her departments.

We found the College did not have the authority to enter into an agreement with the co-op, nor did anyone at the College have the authority to approve a change order of such a large amount. Because

Subject 2 was aware of the issues and was responsible for managing how the Director was proceeding with the building projects, we found reasonable cause to believe an improper governmental action occurred.

### **Storage Building**

The Washington State Board for Community and Technical Colleges (Board) provides services for the state's 34 public community and technical colleges. The Board's capital budget office approves and monitors appropriations and expenditures regarding construction and repair projects.

In June 2013, the College requested authority from the Board to build a 5,200 square foot storage building to house seasonal equipment and a student bus. The Board authorized expenditures of \$150,000.

According to a Department project manager, sometime between the end of 2013 and the beginning of 2014, he assisted the College in contracting with an architectural company to obtain a quote on the cost of construction. The project manager said the College indicated the cost was more than it could afford. He also said the Director was upset over the cost and told the Department representative he would construct the storage building. The Department representative was opposed to the College undertaking construction of such a large building and reached out to Subject 2 to express his concerns.

After receiving the quote, the Director spoke with the Board's capital budget director regarding the construction of the storage building. The Board's capital budget director advised the College's Director that construction could be completed in-house by using College staff. The Director relayed this information to Subject 2, who then informed Subject 1.

The College started site work and construction on the storage building in August 2014, using temporary employees hired specifically for this project, along with its maintenance staff.

In March 2015, a Department representative notified the Board it (the Board) had erroneously applied state law (RCW 28B.50.330) when approving in-house projects for colleges. The law limits the amount of work that can be performed in-house to \$45,000 for one trade or craft and \$90,000 for multiple trades. Anything above these limits must be put out for public bid. A Board representative contacted all the colleges that had authorized approval for in-house projects, and informed them of the Department's interpretation of the law. Subject 2 and the Board representative discussed how the College should proceed. The Board representative said he recommended work be stopped. A Department representative spoke with Subject 2 about the interpretation of the law and advised her to stop the work.

Subject 2 said when she heard about the interpretation and shared it with Subject 1, he asked her to contact the College's attorney for guidance. On March 30, 2015, while waiting for a response from the attorney, Subject 2 directed staff by email to continue building "until someone stops us."

Subsequent to April 22, 2015, after receiving a response from the College's attorney, work was stopped. At that point, the College had spent approximately \$162,000 on the project. In September 2015, the Department approved the resumption of work under a valid contract.

Although Subject 2 relied on the Board's interpretation of the law when initiating the project, she failed to stop the project after being told by the Board and the Department that the College was in violation of the law. Therefore, we found reasonable cause to believe an improper governmental action occurred.

## **Kiosks**

While the storage building was put on hold during the College's search for a contractor, Subject 2 and the Director decided to use the temporary employees to construct four informational kiosks on the campus. We examined the costs of the construction and found the project was within the monetary limits of an in-house project. However, we found the College contracted for the masonry work without using the small works roster.

The Department maintains a list of licensed contractors who are available to contract with state entities, this list is referred to as a small works roster. When a state agency or college has a construction project estimated to cost less than \$300,000, it must select potential contractors from the small works roster.

A Department representative said all state agencies and colleges must use the small works roster when they are awarding a construction contract. The College failed to use the small works roster when it hired a local company to complete the masonry work for the kiosks.

Subject 2 said she did not believe the work needed to be put out to bid because the total cost of the project was under the Colleges delegated authority. Subject 1 did not have any information to provide for this project. He said the project was managed by the Director.

Therefore, we found reasonable cause to believe an improper governmental action occurred.

## **Conclusion**

According to Subject 2, she apprised Subject 1 of the status of the projects at a high level, and did not include him on all decisions that were made. Therefore, we found no reasonable cause to believe Subject 1 committed any improper governmental action.

We found Subject 2 failed to ensure state laws were followed when managing the construction of the Omak building and the kiosks. We also found she instructed staff to continue construction of a storage building after she was informed the project was in violation of law. Therefore, we found reasonable cause to believe an improper governmental action occurred.

## **College's Plan of Resolution**

*It is important to Wenatchee Valley College (WVC) that we appropriately and consistently adhere to all state laws and ethical standards regarding the use of state resources. The Board of Trustees has addressed this with WVC administration and will discuss it again at an upcoming April 2016 Board Meeting. WVC will take the appropriate corrective and/or disciplinary actions in regards to any improper governmental actions found to have occurred. Also, the former Director of Facilities is no longer with WVC.*

*WVC's Plan of resolution:*

- *Capital Projects -the President and Vice President of Administrative Services will meet for weekly updates and the Board of Trustees will be updated at every monthly Board Meeting.*
- *All employees that have any purchasing/budget authority for capital projects have taken the mandatory public works training. Training will be repeated at least annually or as personnel changes.*
- *WVC executive limitation policies relating to asset protection will be reviewed with the financial staff annually.*
- *Department of Enterprise Services will continue to be involved in all capital projects.*

## **State Auditor's Office Concluding Remarks**

We thank College officials and personnel for their assistance and cooperation during the investigation.



## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 28B.50.330 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property — Revenue bond financing — Public bid.

(1) The boards of trustees of college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds ninety thousand dollars, or forty-five thousand dollars if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for a public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid. Any project regardless of dollar amount may be put to public bid.

RCW 43.19.450 Supervisor of engineering and architecture — Qualifications — Appointment — Powers and duties — Delegation of authority — "State facilities" defined.

The Director shall appoint a supervisor of engineering and architecture.

A person is not eligible for appointment as supervisor of engineering and architecture unless he or she is licensed to practice the profession of engineering or the profession of architecture in the state of Washington and for the last five years prior to his or her appointment has been licensed to practice the profession of engineering or the profession of architecture.

As used in this section, "state facilities" includes all state buildings, related structures, and appurtenances constructed for any elected state officials, institutions, departments, boards, commissions, colleges, community colleges, except the state universities, The Evergreen State College and regional universities. "State facilities" does not include facilities owned by or used for operational

purposes and constructed for the department of transportation, department of fish and wildlife, department of natural resources, or state parks and recreation commission.

The Director or the Director's designee shall:

(1) Prepare cost estimates and technical information to accompany the capital budget and prepare or contract for plans and specifications for new construction and major repairs and alterations to state facilities.

(2) Contract for professional architectural, engineering, and related services for the design of new state facilities and major repair or alterations to existing state facilities.

(3) Provide contract administration for new construction and the repair and alteration of existing state facilities.

(4) In accordance with the public works laws, contract on behalf of the state for the new construction and major repair or alteration of state facilities.

The Director may delegate any and all of the functions under subsections (1) through (4) of this section to any agency upon such terms and conditions as considered advisable.

RCW 39.04.155 - Small works roster contract procedures—Limited public works process—  
Definition.

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by

the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the \*department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the \*department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate

roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and

the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the \*department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the \*department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.