



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Clark College

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August 18, 2022

Dr. Karin Edwards, President
Clark College

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 22-005 at the Clark 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 results of our investigation.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Assistant Director for State Audit and Special Investigations Jim Brownell at (564) 999-0782.

Sincerely,

Pat McCarthy, State Auditor

Olympia, WA

cc: Governor Jay Inslee
Sabra Sand, Interim Vice President of Operations/Chief Financial Officer
Kate Reynolds, Executive Director, Executive Ethics Board
Morgan Hendricks, Investigator

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WHISTLEBLOWER INVESTIGATION REPORT

Assertion and Results

Our Office received a whistleblower complaint asserting the Director of Facilities Services (subject) at Clark College grossly mismanaged his responsibilities by instructing staff to procure projects in ways that violated state law.

We found reasonable cause to believe an improper governmental action occurred.

Background

Clark College is a public community college located in Vancouver, Washington. The College provides two-year transfer degrees, four-year degrees, technical training and basic skills classes to more than 12,220 full- and part-time students. The College has various administrative departments, including facilities services. This department provides routine and emergent maintenance, repair, setup, cleaning, equipping, and heating/ventilation of College facilities. It also includes the oversight and administration of capital projects.

The State Board of Community and Technical Colleges (SBCTC) oversees the community and technical colleges' capital budget requests, and creates the project numbers and budgets for the colleges after the Legislature approves funding appropriations. Colleges can use these funds for facility renovation or alteration, or site improvements.

Once the SBCTC approves and funds a capital project, colleges work with their assigned Department of Enterprise Services (DES) project manager to complete them. Some colleges have "delegated authority" through DES which allows them to manage their own projects when certain criteria is met.

About the Investigation

The whistleblower complaint centered on two projects that College maintenance staff performed in-house even though their costs exceeded the threshold that requires public bidding. The complaint alleged the subject grossly mismanaged his responsibilities by procuring these projects in a way that knowingly did not comply with state law.

We verified the College did not comply with state procurement requirements for these two projects. Specifically, we found:

- Expenditures for both projects exceeded \$90,000, which is the threshold outlined in state law that requires a project to be put out for public bid and awarded to the lowest responsible bidder.
- The College did not have delegated authority to manage the projects, and the projects were completed in-house by maintenance staff.

The SBCTC and DES expect colleges to work with a DES project manager once the Legislature approves the project funding. We obtained emails showing that for one of the projects, the subject worked with DES to request a contract design proposal from the College's on-call architect. The architect's proposal totaled \$126,400, significantly higher than what the subject and DES expected, so DES asked the subject how the College would like to proceed. While we found no record of the subject's response, he told us he likely informed DES the College would handle the work in-house because the cost was high.

We also obtained a copy of the subject's job description. It confirms he is responsible for directing and managing capital projects, and ensuring compliance with applicable codes, rules and regulations.

In an interview, the subject acknowledged that both projects did not comply with state procurement laws. He said the on-call architect's proposal alone would have consumed almost one project's entire budget. The subject said he did not ask the on-call architect for a proposal on the second project because he thought he would get the same result. The subject said he understood state procurement requirements, and that he proceeded as he did in order to make the best use of public money for the taxpayers and the College.

In conclusion, we found reasonable cause to believe an improper governmental action occurred because the subject understood state procurement requirements but chose not to comply with them.

College's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) report on Whistleblower Case Number 22-005. Clark College takes these assertions seriously. Management has increased its oversight of Facilities Services to ensure that all public works projects above the established thresholds are properly vetted through DES to ensure compliance with state procurement requirements. The guidance available on the application of these requirements for community colleges is sparse. The College will consult with the SAO as it continues working on process improvements and drafting a new policy on capital and public works projects.

Additionally, the subject of this investigation has resigned from the College effective August 12, 2022. Management will ensure that subject's replacement receives training from the SBCTC and DES on capital and public works procurement requirements.

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: 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 39.26.090 Director’s duties and responsibilities – rules, states in part: The director shall:

(1) Establish overall state policies, standards, and procedures regarding the procurement of goods and services by all state agencies;

(5) Have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar amount or to specific types of goods and services based on a risk assessment process developed by the department.

RCW 42.40.020(4) – State employee whistleblower protection – (4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

DES Policy No. POL-DES-090-00, states in part - Applies to: Any state office or any state office or activity of the executive branch of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016 and correctional and other types of institutions