



MEMORANDUM

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: John Bailey

SUBJECT: Pivotal Point Youth Services

DATE: March 1, 2013

City Administrator

Date

Approval /s/ Deanna J. Santana

 3/1/13

INFORMATION

The purpose of this memo is to provide factual information in relation to certain points made in the Oakland Post #34 February 13-19 articles titled, “**Agencies Say WIB is Choking Services to Youth**” and “**Pivotal Point in Jeopardy Over City Funds.**” Pivotal Point is the only agency mentioned or quoted in the Oakland Post articles.

Pivotal Point Youth Services first became a provider of Workforce Investment Act (WIA) services under the present Oakland Workforce Investment Board (WIB) structure with the City as System Administrator in 2010. They were contracted to provide services to 36 youth for a contract amount of \$149,714. In 2011, because of the loss of another West Oakland provider to the system, their contract was increased to \$331,479, to serve 70 youth. In 2012, they were contracted as a Service Provider for a sum of \$372,000 to serve 78 youth.

Statement #1

“Some have received their contracts as late as January for services that were supposed to begin July 1, 2012.”

Response:

The Youth contracts for the FY 12-13 were issued late due to numerous factors, most significantly because of the lack of adequate staffing until August 2012. On August 1, Budget Resolution 83958 authorizing the FY 12-13 funds for Youth Service Providers was passed by the City Council. In September of that year, the Youth Service Providers were asked to provide scopes of work and budgets to begin development of their contracts. There was considerable back and forth between this office and Pivotal Point, further delaying the contracting process. In mid-November the required signatures were obtained.

There was significant lag between the August 1st filing date of the resolution and the November 29th execution date of Pivotal Point’s contract. The Youth Service Provider contracts for FY12-13 were executed November 29, 2012 with the exception of two; one for YEP, one for Lao

Family Community Development, which were executed on December 5, 2012. In acknowledgement of the delay, all Youth Service Provider contracts will be extended one year to June 30, 2014. All vendors were sent their contracts via certified mail. Pivotal Points' contract was returned because their Emeryville address was no longer valid. The contract was picked up by staff in January and scanned electronic copy was sent to the agency upon execution. It should be noted that all agencies serving clients on behalf of the Oakland Workforce Investment Board have fully executed contracts.

Statement #2

“Under the terms of the previous WIB contracts, Pivotal Point must provide job training and educational counseling programs for youth participants, but does not receive any City of Oakland money until program participants secure an outside job for at least three months, or enroll in college.”

Response:

This statement is only partially correct. The Youth Contracts are Performance Based contracts, which have five set benchmarks. As those benchmarks are met, the agencies may invoice and receive payment. If those benchmarks are not fully met, partial payment on performance can be made. Performance based contracts are an accepted standard for the WIA system, based on best practices which pay contractors based on mutually agreed upon goals and outcomes.

Youth agencies can bill on a reimbursement basis, for administrative costs and for performance benchmarks, of which those mentioned in the article represent only two. Other benchmarks include enrollment in a job training program, notable gains/improvements in numeracy and literacy or becoming employed. Pivotal Point has consistently underperformed and has not been able to realize the full value of their contracts.

Statement #3

“In addition, Lumpkins says that for at least the last two years WIB has been six months late or more in issuing contracts to Pivotal Point and other participating agencies. While the 2012-13 WIB contract should have been issued last April so that it could go into effect at the beginning of the fiscal year, on July 1, Lumpkins said that she has yet to receive a contract”

Response:

In FY 12-13, the Pivotal Point contract was executed on November 29, 2012 and contracts were mailed out to the Service Providers on December 8, 2012. The Pivotal Point contract was returned to this office by the United States Postal Service (USPS) because the Emeryville address was no longer valid; Pivotal

Point failed to notify this office of this change. Ms. Lumpkins retrieved her physical contract in early January 2013.

Statement #4

“Agencies are also asking why they have not received the 20 percent funding advances that are part of their contract.”

Response:

Advances were not part of the original contracts. This issue was voted on in Youth Council in November 2012 and ratified by the full WIB. The amendments containing the provision for an advance and extension to June 2014, have been approved and are presently in the signature phase.

ADDITIONAL ISSUES MENTIONED

Late Payments

In FY 11-12, Pivotal Point had been issued 10 checks totaling \$89,083 which left a balance of \$242,397 on their 2011-2012 contracts. In the FY11-12 contract year, the average time of payment was 17 days, well under the OWIB’s prompt payment goal. OWIB’s payment to Service Providers is not subject to the Prompt Payment policy because a stated policy to that effect is not allowable under existing WIA regulations. OWIB’s policy is meant as an internal goal only.

Outstanding Issues:

Liability

As stated in the Oakland Post Article on Wednesday February 13, 2013, Pivotal Point had youth on site, but had no business liability insurance as of December 17, 2012. Pivotal Point was conducting program activities in clear violation of their contract. A Notice to Cease Activities pending correction is being issued at this time.

Financial Stability and Tax Levy

Also concerning is the basic financial stability of the organization. On two separate occasions Pivotal Points’ business insurance policy has been cancelled on August 17, 2012 and December 17, 2012 respectively. As of this date, neither Pivotal Point nor its insurance company have provided the City with a re issuance of their policy. It is clear that Pivotal Point has been operating a program without proper insurance in violation of their contractual responsibilities.

Another key issue is Pivotal Points’ federal tax liabilities, which date back as far as 2008, before the City of Oakland was the System Administrator. At issue is the fact that federal taxes were withheld from employee paychecks and not forwarded to the Internal Revenue Service.

In December 2012, Pivotal Point was due to receive a check for \$18,179.72. Per the Notice of

Levy, that check was issued to the IRS. Their total tax debt at that time was \$57,000. Prior to this, the City of Oakland had no knowledge that Pivotal Point had any outstanding tax liabilities. This check was passed to the IRS on January 13, 2013.

The levy has since been lifted and Pivotal Point has made the City aware that payment arrangements are being made, but the City has not been advised as to the details of those arrangements. As of this writing, their tax burden is \$28,000.

Actions Pending

1. Notice of Default will be issued requiring correction of the notice of insurance cancellation. The notice will require that appropriate action be taken within 15 days.
2. The Employment Development Department (EDD) recommends that an Incident Report be filed with EDD and the Department of Labor (DOL). Without evidence to the contrary, they believe this tax liability must be amounts due from Employer Contributions and Employee Withholdings from payroll, since this is a not-for-profit organization. The concern is that based on the information available at this time, there is a potential that funds that were withheld from employees (in trust), and/or employer contributions were not deposited with the IRS as required by law. When there is even a suggestion of potential wrong doing, we are obligated to provide the information to the state (EDD) and federal government (Department of Labor Office of the Inspector General.)

Respectfully submitted,

/s/

JOHN R. BAILEY
Executive Director
Workforce Investment Board

For questions, please contact John R. Bailey, Executive Director, Workforce Investment Board, (510) 238-6440.