



MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: John Bailey

SUBJECT: Letter from State of California
Employment Development Department
re: WIB Funds Hearing

DATE: April 24, 2013

City Administrator

Date

Approval

/s/ **Deanna J. Santana**

4/24/13

INFORMATION

The purpose of this Information Memo is to provide information about an appeal filed by the Complainants of the Workforce Investment Board (WIB) RFPs regarding a decision made by a City of Oakland Hearing Officer related to the RFP process used to disperse Workforce Investment Act (WIA) funds. Sixteen (16) organizations and individuals joined in the complaint. The complaint challenged the RFP process and also questions the administrative procedures that supported the process.

On March 25, the State of California Employment Development Department (EDD) Compliance Review Office issued a written ruling advising the City to reconvene the hearing before an impartial Hearing Officer (attached). In a response dated April 9 (attached), Workforce Investment Board (WIB) staff disputed the ruling, citing the following factors:

- The ruling was issued without the benefit of consultation with the City, and as a result, failed to include a number of relevant facts.
- The appeal of the Hearing Officer's decision did not include a complaint that the hearing officer was biased.
- EDD's ruling offered no explanation as to why the Hearing Officer was not considered to be impartial. In fact, EDD's recommended protocols allow for City staff to act as hearing officers as long as they will not be directly affected by nor will they implement the final resolution of the complaint.
- The City staff person who served as the Hearing Officer for this appeal often serves as the first level of response when a claim or protest is filed against the City's RFP process, and in this case is neither directly affected by nor will implement the final resolution of the complaint.
- To ensure that the complainants were satisfied with the fairness of the hearing, on two occasions the claimants were asked if they were comfortable with the Hearing Officer, and on both occasions they declined the City's offer of another Hearing Officer or a Co-hearing Officer.

HONORABLE MAYOR AND CITY COUNCIL

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- Nevertheless, to ensure process integrity, the Hearing Officer did elect to include an independent attorney who works under contract as a Hearing Officer to participate as an observer.
- The complainants never objected to the Hearing Officer, nor did their appeal raise the question of the impartiality of the Hearing Officer. It only stated that they disagreed with the Hearing Officer's decision.

As presented in the April 9 letter, the City did more than meet the requirements for an impartial hearing. Therefore, we requested EDD to rescind the March 25 ruling.

On April 18, the WIB staff received a letter from EDD retracting its request to have the City reconvene a hearing (attached). The appeal of the City Hearing Officer's decision will be reviewed by the State Review Panel as required to ensure that proper procedures were followed.

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.

Attachments (3)



Edmund G. Brown
Governor

March 25, 2013
22:NM

Mr. John R. Bailey, Executive Director
Oakland Workforce Investment Board
Community and Economic Development Agency
250 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Dear Mr. Bailey:

On March 21, 2013, the Compliance Review Office (CRO) received the enclosed request for appeal of the City of Oakland's (the City) decision on a complaint filed by 16 different organizations located in the City's Local Workforce Investment Area (LWIA). Based on our review of the decision and original complaint filed, the CRO has determined that the City did not meet the requirements outline in Workforce Services Directive (WSD) 08-04 II E, which states in part that, the LWIAs seek impartial hearing officers. The City chose a hearing officer that was directly involved with the issues concerning this complaint.

This letter is to advise the City to re-convene a local-level hearing for this specific complaint as mandated by the Workforce Investment Act (WIA) and as guided by State and local directives on grievance and complaint procedures [WIA Section 181 (c); Title 20 CFR Part 667.600; EDD WSD 08-04]. The hearing should be held before an impartial hearing officer within 30 days of receipt of this letter.

If you have questions regarding this letter, you may contact Mr. Nicholas Mayer, Compliance Resolution Analyst, at (916) 653-4569 or Nicholas.Mayer@EDD.ca.gov.

Sincerely,

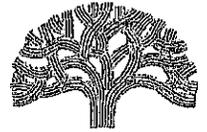
A handwritten signature in black ink that reads "Jessie Mar". The signature is written in a cursive style.

JESSIE MAR, Chief
Compliance Review Office
Policy, Accountability and Compliance Branch

Enclosure

cc: Mr. David Glover, Oakland Citizens Committee for Urban Renewal
Ms. Pamela Salsedo, Oakland Private Industry Council

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deanna J. Santana
City Administrator

(510) 238-3302
FAX (510) 238-2223
TDD (510) 238-2007

April 9, 2013

Jessie Mar, Chief
Compliance Review Office
Policy, Accountability and Compliance Branch
P.O. Box 826880
Sacramento CA 94280-0001

Dear Ms. Mar:

This letter is in response to your letter of notification dated March 25, 2013 on Complainants' Appeal of Decision by the Oakland LWIA Hearing Officer. The letter without enclosure as referenced in your correspondence was received in our office on March 28, 2013. This office immediately notified the Compliance Resolution Analyst of the missing enclosure by email and voice message. Mr. Mayer advised that the size of the appeal prevented him from providing a faxed copy. The copy was officially received on April 3, 2013. This chronology is provided in light of the present direction that a hearing should be held before an impartial hearing officer within 30 days of receipt of your March 25th letter. If required, the latest a hearing should be held would now be May 3, 2013.

You indicated that your decision was based on your review of the decision and the original complaint filed. However, there are, in fact, relevant facts that were neither presented nor requested by your office. It is disappointing that a ruling was issued without the benefit of consulting with the City.

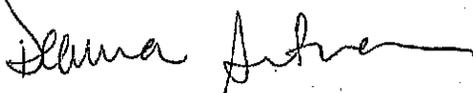
1. In the original complaint, the complainants specifically asked that the "Office of the City Administrator" review the issues. Deborah Barnes is the Contracts and Compliance Manager for the Office of the City Administrator. In her position, her involvement is a matter of standard operating procedures whereby Ms. Barnes serves as the first level of response whenever a claim or protest is filed against the City's Request For Proposals process.
2. The EDD Directive only requires an "impartial hearing officer". It does not prohibit a City staff member from acting as the hearing officer. In fact, the EDD Directive suggests that City staff be used as hearing officers, as long as the staffer will not be directly affected by nor will implement the final resolution of the complaint. (See section II.E.) That is clearly the case as it relates to this complaint. Ms. Barnes is neither directly affected by nor will she implement the final resolution of the complaint.



3. Your letter and the Complainants' Appeal offer no explanation as to why the Contracts and Compliance Manager was considered not to be impartial. Ms. Barnes was not involved in the design of the RFPs, scoring, interviews or rankings. The Administrative Analyst and Compliance Officer were involved in the bidder's conference.
4. The complainants were asked twice if they were comfortable with Ms. Barnes' role as Hearing Officer. (Noted in attachment 1.) On both occasions, the offers of another Hearing Officer or a Co-Hearing Officer were declined. In fact, the representative of the complainants confirmed on April 2, 2013 the complainants' decision not to select a Co-Hearing officer or a different Hearing Officer. Further, the complainants never objected to Ms. Barnes acting as the Hearing Officer in this matter at any time.
5. However, even in light of these discussions, the Hearing Officer engaged an independent attorney who works as a hearing officer (under contract) for the City to participate as an observer to ensure process integrity. There is no reference in the appeal to this observer.
6. In the Complainants' Statement of the Bases for Appeal, there are five causes upon which this appeal is based. The appeal does not reference the Hearing Officer as not being impartial. In fact, the appeal only states the complainants disagreed with the Hearing Officer's decision.
7. The Hearing officer only addressed issues identified in the original complaint. Any information provided by the EDD Regional Advisor was considered as technical advice in keeping with his support role to the LWIA. The Hearing Officer did not consider it proper to include him as a hearing participant. The Hearing Officer holds firm to her determination as presented.

Based on the information presented, the City did more than meet the requirements for an impartial hearing. Therefore, we request that the March 25th ruling be rescinded. If additional clarification is required please don't hesitate to contact John R. Bailey, Executive Director, Workforce Investment Board, at 510-238-6440 or jbailey@oaklandnet.com.

Sincerely,



Deanna J. Santana
City Administrator

Enclosure

cc: Bryan Parker, Chair, Oakland Workforce Investment Board
Carol Padovan, DOL, Employment and training Administration, Region 6, San Francisco
Jose Luis Marquez, EDD, Workforce Services Branch, Sacramento
Douglas Orlando, EDD, Workforce Services Branch, Sacramento



Edmund G. Brown Jr.
Governor

April 18, 2013
22:NM

Ms. Deanna J. Santana, City Administrator
Office of the City Administrator
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Ms. Santana,

In a letter dated March 25, 2013, the Employment Development Department Compliance Review Office notified Mr. John Bailey from the City of Oakland (the City) of an appeal filed by Ms. Pamela Salsedo, Oakland Private Industry Council, regarding a decision by the local level hearing officer. According to Workforce Services Directive (WSD) 08-04, Section II E, individuals selected as a hearing officer should not be directly affected by, or implement the final resolution of, a specific grievance or complaint. In a technical review of the materials submitted by Ms. Salsedo, it appeared that the individual chosen as the hearing officer was also associated with the issues identified in the complaint. As a result, in accordance with WSD 08-04, Section II E, we advised the city to re-convene a hearing before an impartial hearing officer.

In the City's response, dated April 9, 2013, the City stated that the hearing officer was impartial and was not directly affected by nor part of the implementation of the final resolution of the complaint, as described in WSD 08-04. Further, the City's response states the complainants were provided two opportunities to change the hearing officer prior to the hearing. Since the complainants did not object, the hearing officer was not replaced.

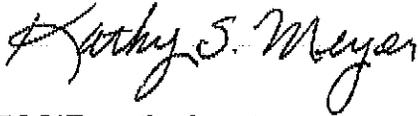
Our letter was not meant to be a ruling or determination on the appeal, or parts thereof, submitted by the complainant. Rather, it was to address a condition in preparation of EDD's review of the appeal. However, we realize the letter should have specifically stated your opportunity to provide additional information. Appeals of local level hearing decisions are reviewed by a panel that will render a decision on the case. The State Review Panel will review the local level hearing process to ensure that proper procedures were followed. Only the State Review Panel can make a decision on the appeal. As a result, we are withdrawing our request to have the City re-convene a hearing.

As the Executive Director of the Workforce Investment Board, Mr. John Bailey will be contacted in the future to provide information and documentation pertaining to the local level hearing in order for the state to hear the complainant's appeal.

Ms. Deanna J. Santana
April 18, 2013
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Please direct questions to Mr. Nicholas Mayer, Compliance Resolution Analyst, at (916) 653-4569 or Nicholas.Mayer@edd.ca.gov. You may also contact Mr. Ali Hayatdavoudi, at (916) 653-0298 or Ali.Hayatdavoudi@edd.ca.gov.

Sincerely,



for JESSIE MAR, Chief
Compliance Review Office
Policy, Accountability, and Compliance Branch

cc: Mr. John Bailey, Oakland Workforce Investment Board
Mr. Jose Luis Marquez, EDD, Workforce Services Branch
Ms. Carol Padovan, DOL, Employment and Training Administration, Region 6
Mr. Brian Parker, Oakland Workforce Investment Board