



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF CHILD SERVICES (DCS)
TITLE: DCS CONFLICTS OF INTERESTS
CASE ID: 2019-04-0090
DATE: November 12, 2019

Inspector General Chief Legal Counsel Tiffany Mulligan, after an investigation by Inspector General Special Agent Mark Mitchell, reports as follows:

The Indiana Office of Inspector General (OIG) investigates potential criminal activity and Code of Ethics violations within the executive branch of state government. Ind. Code § 4-2-7-3. The OIG is statutorily charged with recommending policies to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code § 4-2-7-3(2).

I. Complaint

On April 2, 2019, the OIG received a complaint alleging that a former DCS employee (the Employee) owned an outside business that presented a conflict of interests with his employment at DCS. The complaint alleged that the Employee owned and worked for a company (the Company) at the same time he worked as a Family Case Manager (FCM) for DCS in 2016. The complaint further alleged that the Employee participated in the Request for Proposals (RFP) process for a DCS contract and secured a contract for the Company while he was a DCS employee.

II. Investigation

OIG Special Agent Mark Mitchell conducted an investigation into the allegations. During the course of the investigation, Special Agent Mitchell obtained and reviewed several

documents, including DCS contracts, emails and incorporation records for the Company. He also interviewed the Employee.

Special Agent Mitchell learned that the Employee created the Company in December of 2015, approximately two months before starting work with DCS. The Company is a 501(c)(3) nonprofit organization. The Employee serves as the executive director and board chair of the Company.

The Employee started employment with DCS in early 2016. The Company did not have a contract with DCS when the Employee applied for or started working for DCS. The Employee worked as a FCM for DCS in the assessment section where he investigated complaints of child abuse and neglect to determine if the complaints could be substantiated. If the Employee believed a complaint was unsubstantiated, he would submit a report with his findings to his supervisor, and if his supervisor agreed, she would close the complaint. If the Employee believed that a complaint was substantiated, he would submit his findings to his supervisor, and if his supervisor agreed, she would submit his findings to an online system as a court report. The families then would receive a court date. After the court date, the assessment section would turn the case over to another FCM, known as a permanency worker. The permanency worker would help ensure that the families receive court-ordered services.

In June of 2016, the Employee signed and submitted a proposal for the Company in response to a DCS RFP requesting community-based service providers to provide child welfare services to DCS families. DCS awarded contracts to several service providers under this RFP. The contracts had zero-based consideration, under which the contractors would get paid only after receiving a referral and providing specific services to DCS families.

During his interview with Special Agent Mitchell, the Employee stated that in

preparation for submitting his response to the RFP, he made a public records request for copies of proposals from three other DCS providers on previous RFPs so he could review them and enhance the proposal he was submitting. He provided documentation of this request, which showed he did not use his state email to make the request.

After DCS received the responses to the RFP, a DCS committee reviewed and scored the responses. The Employee stated he never served on this DCS committee, and although he knew of some of the committee members, he did not know any of the committee members personally at the time he submitted the response to the RFP. He also stated that he only told one person at DCS, another FCM, that he was applying for the RFP on behalf of the Company. The FCM was not involved in the committee that reviewed the responses to the RFP. The Employee stated that he had no involvement in any decisions or votes as a DCS employee involving this RFP or the award of a contract.

The Employee submitted his letter of resignation to his DCS supervisor in August of 2016. His last day of employment with DCS was in September of 2016.

The Employee received an email from DCS in October of 2016, notifying him that the Company's contract was under internal review, and once it was approved, DCS would send him a copy of the contract for signature. Both the Employee and the DCS Director signed the contract in November of 2016. The term of the contract was from October 1, 2016 to June 30, 2017; however, it was not until late November 2016 that DCS notified the Employee that the background checks on the Company's contract had gone through and he could begin accepting referrals. He was not permitted to perform work under the contract until he received this clearance. The Employee submitted his first two invoices to DCS in December of 2016, and the State paid the invoices in February of 2017. In May of 2018, DCS renewed its contract with the

Company and extended the contract term to June 30, 2019.

Special Agent Mitchell asked the Employee if the Company has provided any services to individuals or families he assessed or on whose cases he worked while with DCS. The Employee replied that it was possible, but he was not aware of any. He explained that he worked with families at DCS for thirty days or less as an assessment worker so it is difficult to respond to this question with certainty. He stated that if the Company has provided services to any families with whom he worked while at DCS, it was not on purpose.

Special Agent Mitchell asked DCS for a list of cases on which the Employee worked while with DCS and a list of cases on which the Company provided services for DCS. He cross-checked the lists and found no names that appeared on both lists. In other words, he found no evidence that the Employee worked on particular cases at DCS on which he later worked for the Company.

III. Analysis

The OIG reviewed several provisions of the Code of Ethics (Code), which is found in Ind. Code 4-2-6 and 42 IAC, to determine if the investigation revealed evidence to support a violation of the Code.

First, Special Agent Mitchell found insufficient evidence that the Employee violated Ind. Code § 4-2-6-9, the Code's conflicts of interests in decisions and voting rule. This statute prohibits a state employee from participating in any decision or vote, or matter related to a decision or vote, if the state employee knows that a business organization in which the employee serves as an officer, member or employee has a financial interest. The Employee served as the owner and an employee of the Company, and the Company had a financial interest in its contract with DCS; however, Special Agent Mitchell found no evidence that the Employee was involved

in DCS's decision to award a contract to the Company.

Second, Special Agent Mitchell found insufficient evidence that the Employee violated Ind. Code § 4-2-6-10.5, the Code's conflicts of interests in contracts rule. This statute prohibits a state employee from knowingly having a financial interest in a contract made by any state agency, unless certain exceptions are met. Special Agent Mitchell found that although the Employee had a financial interest in the Company, the Company did not have a contract with DCS until after the Employee left DCS employment; therefore, the Employee did not have a financial interest in a state contract while he worked for DCS. Both parties signed the contract after the Employee left DCS, and the Employee was not cleared to perform work under the contract until after he left DCS.

Third, Special Agent Mitchell found insufficient evidence that the Employee violated the criminal conflicts of interests statute found in Ind. Code § 35-44.1-1-4. This statute prohibits a public servant from knowingly or intentionally having a pecuniary interest in "a contract or purchase connected with an action by the governmental entity served by the public servant." As noted above, DCS did not enter into the contract with the Company until after the Employee left state employment.

Fourth, Special Agent Mitchell found insufficient evidence that the Employee violated Ind. Code § 35-44-1-1-5, the criminal profiteering from public service statute. This statute prohibits a public servant from knowingly or intentionally having a pecuniary interest in a contract or purchase with his or her agency within one year of leaving employment with the agency if the public servant "approved, negotiated, or prepared on behalf of the agency the terms or specifications of: (A) the contract; or (B) the purchase." Special Agent Mitchell found no evidence that the Employee was involved in approving, negotiating or preparing the terms of

DCS's contract with the Company while he was with DCS.

Finally, Special Agent Mitchell found insufficient evidence that the Employee violated Ind. Code § 4-2-6-11, the Code's post-employment rule by working for the Company after leaving state employment. The Employee does not work as a lobbyist for the Company. Furthermore, Special Agent Mitchell found no evidence that the Employee engaged in the negotiation or administration of a contract with the Company or made a regulatory or licensing decision that directly applied to the Company while working with DCS. He also found no evidence that the Employee has represented or assisted the Company on a particular matter on which he worked while with DCS.

IV. Conclusion

Although Special Agent Mitchell found the Employee submitted a response to a DCS RFP while he was working for DCS, he found insufficient evidence that the Employee violated any provisions of the Code. The OIG recommends that state employees who find themselves in similar situations consult with their ethics officer or request an informal advisory opinion from the Office of Inspector General prior to submitting a response to an RFP to the agency for which they work. This would allow the employee to fully consider all potential Code provisions that may apply.

Because Special Agent Mitchell's investigation yielded insufficient evidence of a violation of the Code, the OIG is closing this case for insufficient cause.

Dated: November 12, 2019

APPROVED BY:



Lori Torres, Inspector General