



THE CITY OF SAN DIEGO

DATE: December 15, 2011

TO: Beth Murray, Deputy Director
Economic Development Division

Gail Granewich, City Treasurer
Office of City Treasurer

FROM: Eduardo Luna, CIA, CGFM, City Auditor
Office of the City Auditor

SUBJECT: **Hotline Investigation Report of the Pacific Beach Community Development Corporation**

The Office of the City Auditor received a Fraud Hotline complaint that alleged that the Pacific Beach Community Development Corporation (PB-CDC) was operating in violation of its contract with the City. The PB-CDC is a non-profit corporation that contracts with the City to manage the Pacific Beach Business Improvement District (PB-BID). The complainant alleged that the PB-CDC was in violation of its contract with the City by not securing multiple bids for contracts with vendors that exceed \$5,000, and that it committed Brown Act violations by taking board votes on issues that were either not properly noticed and/or not listed as action items on the agenda. The complainant also alleged that specific businesses in the PB-BID were underpaying their BID assessment and City Business Taxes by underreporting to the City the number of employees in the business.

The City Auditor investigated the contract non-compliance issues with the assistance of the Office of Economic Development, and the Business Tax compliance issues were investigated with the assistance of the Office of the City Treasurer. We concluded that the complainant's allegations were substantiated.

City Contract Non-Compliance

The Office of Economic Development reviewed fiscal year 2011 reimbursement requests and determined that a vendor received payments in excess of \$5,000 that required PB-CDC to get written bids in the vendor selection process. PB-CDC admitted that they were not in compliance with the terms of the contract with the City regarding this vendor, and then agreed to issue a Request for Proposal (RFP) regarding the services provided by this vendor and solicit at least five bids for these services in December 2011.



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Brown Act Non-Compliance

The Brown Act¹ states that the public commissions, boards and councils, and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. Compliance with the Brown Act is required for all contracts with Community Development Corporations.

We found there were Brown Act violations regarding instances of insufficient agenda item descriptions and meeting notice noncompliance. A review of PB-CDC Board meeting minutes indicated that the Board cured certain Brown Act violations by rescinding the vote taken in noncompliance and scheduling a special meeting with proper voting procedures.

The Office of Economic Development Division has directed the PB-CDC to cure Brown Act violations that comes to its attention, and has put the PB-CDC on notice that failure to comply with the Brown Act can result in early termination of the contract with the City.

The PB-CDC stated that staff has recently attended two Brown Act training sessions. The CDC also stated that it is their policy to post agendas for the Board of Directors meetings and all subcommittee meetings at least 72 hours in advance of the meetings in an area freely accessible to the Public, and moving forward they will continue to be even more diligent in complying with the Brown Act requirements.

Business Tax Non-Compliance

The City of San Diego annually assesses business tax based on the number of employees employed by a business.² Businesses with twelve or fewer employees pay a business tax of \$34 per year. Businesses with thirteen or more employees pay \$125 plus \$5 per employee per year. Employees who work less than ten hours per week are not counted.

The City Auditor issued a performance audit report regarding the Citywide Revenue Audit on March 5, 2010, which included a recommendation regarding Business Tax assessment methods and non-compliance issues. The Treasurer's Office agreed with the recommendation and has implemented procedures to verify the employee counts of businesses in the City.

These verification procedures were used to contact each of the 23 businesses that were identified in the complaint as allegedly being non-compliant with reporting employee count. City Treasurer staff reported that 22 of the 23 businesses provided the requested verification. The employee count rose from 52 to 297 which generated approximately \$3,000 in BID assessments and business taxes. Follow-up procedures are ongoing with the one business that did not respond to the verification request.

¹ Ralph M. Brown Act - CA Government Code §54950 et seq

² See San Diego Municipal Code (SDMC) §31.0301.

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We appreciate the assistance we received from Economic Development and City Treasurer staff during our investigation. Thank you for taking action on these issues.

A handwritten signature in cursive script that reads "Eduardo Luna". The signature is written in black ink on a light-colored background.

Eduardo Luna

City Auditor

cc: Honorable Mayor Jerry Sanders
Honorable City Council Members
Honorable Audit Committee Members
Jay M. Goldstone, Chief Operating Officer
Wally Hill, Assistant Chief Operating Officer
Mary Lewis, Chief Financial Officer
Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst