

DEPARTMENT OF TRANSPORTATION

Investigations of Improper Activities by State Employees, Report I2001-1

ALLEGATION I980141, APRIL 2001

We investigated and substantiated that an employee of the California Department of Transportation (Caltrans) violated conflict-of-interest laws and engaged in incompatible activities. In addition, Caltrans failed to identify and prevent conflicts of interest. Specifically:

Audit Highlights . . .

A California Department of Transportation (Caltrans) employee:

- Had a conflict of interest when he participated in making Caltrans decisions that benefited a company owned by his wife.***
- Misused his state position to influence Caltrans contractors and other private businesses to do business with his wife's company.***
- Used state resources to solicit work for his private consulting business.***

Caltrans:

- Did not require this employee, nor others in similar classifications, to file annual statements of economic interest to assist in identifying and preventing conflicts of interest.***
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Finding #1: The employee participated in a governmental decision that benefited his wife's company.

The employee, acting within the authority of his position, but contrary to state law, recommended that the erosion control product sold by his wife's company be used on a Caltrans project, resulting in state payments to her company.

Finding #2: The employee's actions created at least the perception of more conflicts of interest.

At least 35 contractors, subcontractors, or vendors on Caltrans projects also purchased products from the company owned by the employee's wife. The employee's state position provided him with the opportunity to influence contract specifications and wield considerable power over a substantial number of contractors and subcontractors, creating at least the perception of more conflicts of interest.

Finding #3: The employee offered to use his influence to benefit other companies and potentially himself.

The employee told a business owner that he could use his Caltrans position to make sure that a product he wanted to manufacture and sell with the owner would be specified for projects throughout the State. The employee violated the prohibition against incompatible activities by offering to use the influence of his state position in ways that would financially benefit not only contractors but possibly himself. Another company's Web site contained a quote from the employee, who was identified as a Caltrans employee, which could be interpreted as an endorsement.

Finding #4: Contractors believe the employee used his authority to influence and intimidate them and others.

Contractors told us that they believed the employee had used his state position to compel, intimidate, or threaten contractors to get them to use particular materials produced by his wife's company. In addition, the employee's favoritism toward some vendors was not only discouraging for the competition but also might have resulted in Caltrans paying higher prices.

Finding #5: The employee created confusion by representing both Caltrans and his wife's company.

The employee represented both Caltrans and his wife's company at professional conferences, creating confusion about whose interests he was representing. The fact that the employee both works for Caltrans and represents his wife's company could be interpreted as a Caltrans endorsement, creating an unfair advantage for the company.

Finding #6: Caltrans conducted three investigations of possible conflicts of interest involving the employee but did not take appropriate action.

Caltrans knew the employee wrote contract specifications and tried to use his influence in other ways that benefited his wife's company. Caltrans also knew the employee solicited private consulting work on state time. Although Caltrans issued instructions for conduct to the employee, he violated the instructions and continued to use Caltrans information to his advantage by assisting his wife's company. Individuals in the erosion control industry said that Caltrans' inaction sent a clear signal that this is what passes for acceptable behavior by state employees.

Finding #7: Caltrans has not established adequate controls over conflicts of interest.

Caltrans did not require the employee, or other employees in similar positions of influence, to disclose their financial interests. As a result, Caltrans may be unaware of employees' financial interests that could conflict with their responsibilities as state employees.

Caltrans Action: Partial corrective action taken.

In January 2001 Caltrans told us it reassigned the employee to a job where he no longer had responsibilities that could constitute a conflict of interest. Caltrans told us it issued revised policies on conflicts of interest and incompatible activities.

Caltrans also told us it had suspended the employee for 45 days without pay. However, we discovered that this information was incorrect. After serving the employee with notice of a 60-day suspension without pay, the employee appealed and a formal agreement between the parties stipulated a 30-day suspension without pay. Although Caltrans says that the employee did not report to work for 30 working days per the agreement, due to a Caltrans processing error, the employee continued to receive his full salary and failed to notify Caltrans of this fact.

After we brought this matter to its attention in October 2001, Caltrans notified the employee that he would have to repay over \$7,300 and has given him a number of repayment options. Since Caltrans made the error, it does not plan to take any further action against the employee for failing to disclose the fact that he continued to receive his full salary and benefits during his suspension. It is unclear whether Caltrans would have discovered its error or whether the employee would have ever brought it to Caltrans' attention. Nevertheless, Caltrans' error essentially led to the employee receiving an interest free loan.

