

State of New Jersey

**Schools Development Authority
Office of the Inspector General**

Former Employee's Unethical Conduct
February 3, 2010

**Mary Jane Cooper
Inspector General**



State of New Jersey

CHRIS CHRISTIE
Governor

OFFICE OF THE INSPECTOR GENERAL
P.O. BOX 208
TRENTON, NJ 08625-0208

KIM GUADAGNO
Lt. Governor

MARY JANE COOPER
Inspector General

February 3, 2010

Honorable Chris Christie
Governor, State of New Jersey
State House
PO Box 001
Trenton, NJ 08625

**Re: Investigation of unethical conduct by former employee of the
New Jersey Schools Development Authority**

Dear Governor Christie:

Enclosed is a copy of the report the New Jersey Schools Development Authority Office of the Inspector General (SDA OIG) has prepared in response to a request for investigation from the New Jersey Schools Development Authority (SDA).


As required by statute, a copy of this report has been sent to Senate President Stephen M. Sweeney, Assembly Speaker Sheila Y. Oliver and SDA Acting Chief Executive Officers Jane Kelly and Thomas DiGangi.

The evidence indicates that the former employee's conduct has implicated the New Jersey Code of Ethics and the OIG has referred this matter to the New Jersey State Ethics Commission for potential further proceedings. OIG is also forwarding this report to the Division of Criminal Justice for its determination of whether further action is warranted by that agency. Accordingly, the identity of the employee who is the subject of the report has been excluded from the report. It has been revealed to the State Ethics Commission and the Division of Criminal Justice in a separate confidential letter. The SDA is already aware of the former employee's identity.

Governor Chris Christie
February 3, 2010
Page 2

The SDA OIG's investigation of this matter is now complete. I am available to discuss this report with you at any time.

Respectfully,



Mary Jane Cooper
Inspector General of New Jersey

cc: Kim Guadagno, Lieutenant Governor
Stephen M. Sweeney, President, New Jersey State Senate
Sheila Y. Oliver, Speaker, New Jersey State Assembly
Jane Kelly, Acting Chief Executive Officer, Schools Development Authority
Thomas DiGangi, Acting Chief Executive Officer, Schools Development Authority
Jeffrey Chiesa, Chief Counsel to the Governor
Deborah Gramiccioni, Director, Governor's Authorities Unit
Stephen Taylor, Director, Division of Criminal Justice
Kathleen Wiechnik, Executive Director, State Ethics Commission

**State of New Jersey Office of the Inspector General
New Jersey Schools Development Authority
Former Employee's Unethical Conduct**

Table of Contents

| | | |
|------|---|----|
| I. | INTRODUCTION | 1 |
| II. | STANDARDS | 3 |
| A. | Post-employment Conduct | 3 |
| B. | Undue favorable Treatment to Potential Employers | 5 |
| C. | Solicitation of Employment..... | 6 |
| III. | ANALYSIS OF EVIDENCE | 7 |
| A. | Background..... | 7 |
| B. | Post-employment Conduct | 10 |
| C. | Solicitation of Employment..... | 18 |
| D. | Undue Favorable Treatment of PMF..... | 21 |
| IV. | SUMMARY OF CONCLUSIONS | 25 |
| A. | Conduct Appears to Implicate New Jersey Statutes and Ethics Codes | 25 |
| B. | Conduct Appears to Implicate New Jersey Ethics Codes..... | 25 |
| C. | Conduct Does Not Appear to Implicate New Jersey Criminal Statutes | 25 |
| V. | REFERRALS..... | 26 |
| A. | Referral to the Division of Criminal Justice | 26 |
| B. | Referral to the State Ethics Commission | 26 |
| VI. | RECOMMENDATION..... | 27 |

I. INTRODUCTION

The New Jersey Schools Development Authority (SDA)¹ forwarded this matter to the SDA Office of the Inspector General (SDA OIG) to investigate an allegation of unethical conduct committed by a former SDA employee who had purportedly telephoned the SDA on behalf of his new employer regarding a matter on which he had worked while at the SDA.²

The former SDA employee left the SDA on January 19, 2007 and now works for a company that (among its various contracts) serves as a project management firm (PMF) for the SDA. The former SDA employee had allegedly telephoned a current SDA employee on April 30, 2007 to discuss the status of the PMF's contract amendment.³ The former employee, while employed by the SDA, had represented the SDA in negotiating this specific contract amendment with the PMF. The SDA referred this matter to the SDA OIG to investigate this potentially improper conduct.

¹ The SDA was created by legislation signed into law by Governor Jon S. Corzine on August 6, 2007 as the successor to the New Jersey Schools Construction Corporation (SCC). Although most of the conduct at issue in this matter took place before the SDA succeeded the SCC, the term SDA will be used consistently throughout the report to describe the entity for the sake of consistency and to avoid confusion.

² The former SDA employee whose conduct is under review will not be identified by name in this report. He will be referred to as "the former employee" or "the now-former employee." The identity of the former employee is, of course, already known to the SDA management, who had referred this matter to the SDA OIG.

³ A contract amendment is the mechanism by which a PMF obtains additional compensation from the SDA for work beyond the scope of the original contract.

SDA management also expressed a concern that while he was still employed by the SDA, the former SDA employee may have recommended undue additional compensation to this PMF (and others) in an attempt to obtain post-SDA employment with the PMF. SDA management asked the SDA OIG to investigate.

Before he resigned from the SDA, the employee stated to SDA management⁴ that he would be working on the Freedom Tower construction project in New York City, and thus, implied that he would be employed by the Port Authority of New York and New Jersey (the Port Authority). The April 30, 2007 telephone call was the first time SDA management learned that the former SDA employee worked not for the Port Authority but rather for a PMF with whom he had direct and substantial contact while he had been employed by the SDA and who was still doing substantial work for the SDA.

⁴ The SDA management included the Chief Executive Officer, the Chief Operating Officer, the Chief Counsel and a Vice President.

II. STANDARDS

A. Post-employment Conduct

New Jersey statute prohibits a former State employee from representing, appearing for or negotiating on behalf of his new employer in connection with any matter in which he had been substantially and directly involved at any time during the course of his employment with the State.

No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, . . . any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. N.J.S.A. 52:13D-17

A willful violation of this statute is a disorderly persons offense subject to a fine not to exceed \$1,000 or imprisonment not to exceed six months, or both, and the State Ethics Commission shall assess a civil penalty of not less than \$500 nor more than \$10,000 for violations of the statute.

The New Jersey Schools Construction Corporation Code of Conduct, the New Jersey Uniform Ethics Code, and the Plain Language Guide to New Jersey's Executive

Branch Ethics Standards⁵ likewise explicitly prohibit a former employee from representing, appearing for or negotiating on behalf of any entity on a matter in which the employee had been directly involved during the course of his employment with the SDA.

Immediately before leaving the SDA, the employee signed the Ethics Post-Employment Acknowledgement Letter which again reminded him that he could not “represent, appear for, [or] negotiate on behalf of . . . any person or party other than the Corporation [SDA] in connection with any cause, proceeding, application or other matter

⁵ Section XI of the Code of Ethics contained within the New Jersey Schools Construction Corporation Code of Conduct states in pertinent part:

(a) No employee or director, subsequent to the termination of his or her office or employment with the Corporation, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to; or agree to represent, appear for, negotiate on behalf of or provide information not generally available to the public or services to . . . any person or party other than the Corporation in connection with any cause, proceeding, application or other matter with respect to which such employee or director shall have made any investigation, rendered any ruling, given any opinion, or otherwise been substantially and directly involved at anytime during the course of his or her office or employment.

The Uniform Ethics Code, in Section VIII entitled “Post-Employment Restrictions” states:

At no time subsequent to the termination of his/her office or employment in any State agency may a former State officer or employee or special State officer or employee represent, appear for, negotiate on behalf of, or provide information or services not generally available to members of the public, or agree to perform any of those activities, for any party other than the State in connection with a specific cause, proceeding, application or matter with which the State officer or employee or special State officer or employee had been substantially and directly involved at any time during the course of his/her office or employment.

The Plain Language Guide to New Jersey’s Executive Branch Ethics Standards repeats this prohibition in two separate sections.

The section entitled “Post-Employment Lifetime Restrictions” states: “After you leave public employment, you may not represent or assist a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employ.” See Plain Language Guide, p. 2.

Similarly, the section entitled “Dealing with the State after your Departure” states: “As a former employee, you will be prohibited from representing or assisting a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employment.” See Plain Language Guide, p. 11.

with respect to which such employee or director shall have made any investigation, rendered any ruling, given any opinion, or otherwise been substantially and directly involved at any time during the course of his or her office or employment.”

B. Undue favorable Treatment to Potential Employers

The New Jersey Schools Construction Corporation Code of Conduct explicitly prohibits an employee from accepting any benefit or thing of value in exchange for the employee’s performance of his official duties.⁶ Thus, an employee may not solicit or accept an offer of employment as *quid-pro-quo* for performing his official acts. The conduct of a State employee providing undue favorable treatment to a vendor in exchange for obtaining employment from that vendor may also implicate provisions of the New Jersey Criminal Code.⁷

⁶ The Code of Business Conduct portion of the New Jersey Schools Construction Corporation Code of Conduct in Section III, “Standards of Conduct” paragraph 3, “Kickbacks and Rebates” states:

No employee, director or agent may, directly or indirectly, solicit, accept or agree to accept any benefit or thing of value for, or because of, any official act performed or to be performed. No employee, director or agent may solicit or accept personal kickbacks, rebates, gratuities or any form of “under the table” payment, either directly or indirectly. This includes not only cash payments, but also any other service or thing of value, which may be intended to influence the actions of the employee, director or agent of the Corporation.

Similarly, Section III, “Standards of Conduct” paragraph 6, “Duty of Loyalty to the Corporation” states:

No employee may realize personal gain from employment with the Corporation other than salary and benefits provided and paid by the Corporation and the State.

⁷ The Criminal Code states:

A public servant commits a crime if, under color of office and in connection with any official act performed or to be performed by the public servant, the public servant directly or indirectly, knowingly solicits, accepts or agrees to accept any benefit . . . to influence the performance of an official duty . . .

N.J.S.A. 2C:27-10. See also, N.J.S.A. 2C:21-10 and N.J.S.A. 2C:27-2

C. Solicitation of Employment

An employee shall not solicit employment from any firms with whom the employee has direct and substantial contact while those firms are doing business with the State.⁸ Moreover, if the employee receives an unsolicited offer of employment from such a firm, he must disclose the offer to the Ethics Liaison Officer to dispel even the appearance that he had obtained the offer of employment in exchange for giving favorable treatment to that firm.

⁸ The Plain Language Ethics Guide, in a section entitled “Seeking Future Employment” states:

If you have direct and substantial contact with any consultants or vendors doing business with the State, you must refrain from circulating resumes or in any manner seeking employment with those firms while you are still in State service. If you are solicited for potential employment by a firm with which you have direct and substantial contact, that solicitation must be disclosed immediately to your management and to your ELO [Ethics Liaison Officer] to avoid a situation where you may appear to be using your official position to gain an unwarranted advantage.

III. ANALYSIS OF EVIDENCE

A. Background

The SDA records showed that as part of its original contract with the SDA, this PMF was assigned a number of Health and Safety projects.⁹ After the PMF surveyed the existing conditions at the schools in this district, the PMF found a greater need for Health and Safety work. The total construction cost for these projects increased by \$13,140,513. The PMF sought additional compensation for managing this increased construction. The PMF's contract with the SDA provided that the PMF would be paid a percentage of the construction cost for additional projects.

The SDA employee responsible for negotiations with this PMF was a Senior Project Officer,¹⁰ who posited that the PMF should receive additional compensation only to the extent that the increased construction cost was the result of an increase in the scope of the work and argued that to the extent the increase in cost was merely caused by higher prices for materials, no additional compensation was justified because the PMF was not performing any additional work.

⁹ Health and Safety projects are in the nature of school repairs to correct dangerous or unhealthy conditions, such as broken windows or doors, leaking roofs, exposed wiring, malfunctioning heating systems, defective plumbing and similar matters.

¹⁰ The identity of this employee and other employee witnesses are known to SDA management but will not be revealed in this report to protect the confidentiality of witnesses who the evidence indicates have not engaged in improper conduct and whose identities have not otherwise been made publicly known .

It was determined that only \$6,338,017 of the total construction cost increase of \$13,140,513 was an increase in scope of work; and the balance was the result of escalation in the price of material. The PMF contract stated that the PMF would be paid 8.5% of the construction cost for additional projects, thus the PMF was entitled to 8.5% of \$6,338,017 for increased scope of work. This equaled \$538,731. The PMF and the SDA agreed to this figure, and the SDA then paid the PMF this amount in 2004.

Two years later, in response to a request from an SDA Regional Director, the PMF sent a voluminous, comprehensive proposed amendment to the SDA by letter dated March 28, 2006. Several projects had been suspended and the SDA was seeking a credit from the PMF. The PMF's letter calculated the credit for those suspended projects, but also requested additional compensation from the SDA for other matters, including—despite the earlier negotiated settlement—\$815,781 for the Health and Safety work. This figure was allegedly based on the actual PMF hours expended for Health and Safety work as a result of delays outside the control of the PMF. The PMF had changed personnel and the new head of the PMF office insisted that the contract entitled the PMF to additional compensation.

As a result of restructuring at the SDA, the negotiation of PMF amendments in 2006 was assigned to the now-former SDA employee who is the subject of this investigation. In his work on PMF amendments at the SDA, the former employee was assisted by the Senior Project Officer who had participated in the original negotiation of

the Health and Safety Amendment for this PMF back in 2004 when it had been resolved for \$538,731.

Representatives of the PMF and the SDA – including the now-former SDA employee, the Senior Project Officer, an SDA Regional Director, and an SDA Project Manager – met on November 17, 2006 to discuss four proposed amendments for this PMF. One of the amendments was a “Health and Safety Amendment.”

The SDA OIG interviewed the Senior Project Officer who indicated that he was present for most of the November 17, 2006 meeting. He told SDA OIG that the former employee was the lead negotiator at the meeting. The Senior Project Officer told SDA OIG that he, the Senior Project Officer, participated in the discussion of three of the amendments with the PMF, but refused to participate in the discussion of the Health and Safety Amendment. He believed that the PMF was attempting to supplement its earlier Health and Safety amendment without having performed any additional work to justify any additional payment. Therefore, he left the meeting and was not present for the 2006 discussion of the new health and safety amendment.

During its investigation, OIG SDA reviewed SDA files for this amendment. The evidence indicates that possible settlement figures were discussed but no final agreement was reached. The file indicates that the SDA Regional Director responsible at the meeting had objected to reaching a final agreement and settlement before all Health and

Safety projects were completed.¹¹ Thus, the evidence in the file indicates that no final settlement amount was agreed to and no payments were sent to the PMF by the SDA as a result of this November 17, 2006 meeting.

In early January 2007, the now-former employee announced he was leaving SDA to work on the Freedom Towers, but not that he was leaving to work for the PMF. His last day of employment at SDA was January 19, 2007.

B. Post-employment Conduct

In early April 2007, the Senior Project Officer who had worked on the PMF Amendments with the former SDA employee was asked by the SDA Assistant Counsel to assist her in a matter involving the PMF. The PMF had written a letter asserting that the Health and Safety Amendment had been negotiated to an agreed upon settlement of \$642,990 during the discussion of November 17, 2006, and the PMF was requesting payment of that amount. The SDA Assistant Counsel asked the Senior Project Officer to research the matter so that she could appropriately respond to the PMF.

After reviewing the letter and the SDA file, the Senior Project Officer responded to the SDA Assistant Counsel in an e-mail dated April 13, 2007 that the file indicated

¹¹ As discussed *infra*, this documentary evidence was confirmed during SDA OIG's investigation by both the Senior Project Officer and a Project Officer who worked on the amendments with the former SDA employee. Although neither had been present during the negotiations of the Health and Safety Amendments, they both had continued to work on the Amendments. The Senior Project Officer had conversations with the senior management that had been present indicating that this was the outcome of the meeting, and the Senior Project Officer had communicated this information to the Project Officer.

settlement numbers had been discussed but that no final agreement had been reached between the SDA and the PMF for the Health and Safety Amendment. The SDA Assistant Counsel responded to the PMF accordingly.

The Senior Project Officer told the SDA OIG that on the morning of April 30, 2007, he received a call on his cell phone from the former SDA employee. The Senior Project Officer was in a meeting and did not take the call. A Project Officer who had worked on the PMF Amendments with the former employee and the Senior Project Officer told the SDA OIG that he, too, received a call that same morning from the former SDA employee, who asked to speak with the Senior Project Officer. The former employee asked the Project Officer to have the Senior Project Officer return the call.

The Project Officer and the Senior Project Officer both told the SDA OIG that they returned the telephone calls together at 11:00 a.m. from a speaker phone in an SDA conference room. After some social conversation, the former employee told them that at the November 17, 2006 meeting, the SDA and the PMF had agreed to settle the Health and Safety Amendment, and that the SDA was now reneging. The former employee added that the PMF was questioning the honesty of the Senior Project Officer because the SDA was not living up to the agreed upon settlement.

The Project Officer and the Senior Project Officer both told the SDA OIG that the Senior Project Officer told the former employee that his research had revealed that no settlement had been reached on the Health and Safety Amendment at the November 17,

2006 meeting. The former employee insisted that the Amendment had been settled, and he told the Senior Project Officer to review the files that the former employee had left behind.

During the conversation, the Senior Project Officer realized that the former SDA employee was now working for the PMF and that talking about this matter created an ethics problem for the former SDA employee. The Senior Project Officer told the former employee “it was a conflict” for the former employee to be calling the SDA on behalf of his current employer on a matter that the former employee had worked on while at the SDA. They ended the telephone call, but the Senior Project Officer agreed to review those files that the former employee had talked about.

The former SDA employee telephoned again that same day around 3:00 p.m. The Senior Project Officer was in his own office at the SDA, and the Project Officer was present with the files that the former employee had left behind at the SDA. The former employee directed them to specific documents in the files. While the Senior Project Officer spoke with the former employee, the Project Officer pulled the documents.

One document, dated November 17, 2006, was a page of hand-written calculations and notes prepared by the former employee at the meeting. This document showed the numbers that had been discussed, but the sheet was crossed-out. In the margin, the former employee had written: “no go per [SDA Regional Director] until work is done.”

The Senior Project Officer explained to the SDA OIG that he understood this margin note to mean that the SDA Regional Director had decided that the SDA would not settle the Health and Safety Amendment until all Health and Safety work was actually completed.

Another document pulled from the files during that telephone call was a spread sheet that the former employee had maintained on his SDA computer. The spread sheet showed that the Health and Safety Amendment had been discussed and numbers proposed, but the column entitled “notes” stated that no amendment would be considered until after the PMF closed out all health and safety work. This was consistent with what the Senior Project Officer had previously understood when he reviewed the file for the SDA Assistant Counsel and what he had reported to the SDA Assistant Counsel.

Notwithstanding the plain meaning of these documents that the former employee had prepared in working on the matter while employed by the SDA, the former employee insisted to the Senior Project Officer that the SDA had nevertheless reached a final settlement with the PMF on this amendment. The Senior Project Officer again told the former employee that it was inappropriate for the former employee to call him to discuss the matter and ended the conversation. The total duration of the call was less than ten minutes.

The Senior Project Officer contacted the SDA Regional Director later that day. The SDA Regional Director confirmed that the Senior Project Officer's understanding of the meaning of the document was correct and that the Health and Safety Amendment had never settled because his objection to settling before all of the health and safety work was completed. As a courtesy, the Senior Project Officer called the former employee at about 8:00 p.m. to say that the SDA Regional Director had confirmed that the Health and Safety Amendment had not been settled at the November 17, 2006 meeting (or thereafter). The Senior Project Officer also told the former employee that despite their friendship, they should never discuss matters past or present involving this PMF, and the former employee agreed.

The SDA OIG interviewed the former employee.¹² The former SDA employee stated that after he left the SDA, he received frequent telephone calls from the Senior Project Officer asking for guidance and information. The former employee told the SDA OIG that he did not discuss the Health and Safety Amendment with his new employer, the PMF, and had not been asked by his new employer to look into this matter.

The former SDA employee denied that he telephoned the Senior Project Officer to urge him to have the SDA pay the amount. He asserted that the Senior Project Officer had contacted *him* and that he had merely responded to a request for information from the Senior Project Officer -- what numbers had been discussed between the SDA and the PMF at the November settlement meeting -- because the Senior Project Officer had failed

¹² The PMF's outside counsel, one of the PMF's staff attorneys and the former employee's personal counsel attended the interview, which was conducted at the PMF's office in New York City.

to take adequate notes of the November 17, 2006 meeting. The former employee told the SDA OIG that he told the Senior Project Officer where to find the former employee's notes so that the Senior Project Officer could get those numbers. He denied that he told the Senior Project Officer that the PMF accused the SDA of reneging or accused the Senior Project Officer of dishonesty. Thus, as he described the conversation, he was not "representing, appearing for, or negotiating on behalf of the PMF."

The former employee told the SDA OIG that even though the Health and Safety Amendment was not finalized at the November 2006 meeting, the two sides did at least agree upon the actual dollar figure for that amendment. That number, according to the former SDA employee's review of his notes, was \$642,990.

The SDA OIG showed the former employee the hand-written calculations from the November 17, 2006 meeting with the cross out and the margin note. The former employee told the SDA OIG that he could not remember why the page had been crossed out. He recalled that the two sides had agreed upon \$642,990 but could not finalize the agreement because, as the margin note indicated, the SDA Regional Director's concerns precluded the submission of the amendment to the SDA Board for final approval.

The SDA OIG showed the former employee the former employee's spread sheet created while he was still an SDA employee. The former employee explained that this merely established that the amendment had never been submitted to the Board and thus was never finalized; it did not mean that the two sides had failed to agree upon the figure.

The former employee told the SDA OIG that either later the same day or the day after the Senior Project Officer had called him seeking information, the Senior Project Officer again called to say that he was in trouble for speaking with the former SDA employee. The former employee said that the Senior Project Officer feared losing his job over the matter.

The former employee's version of the telephone conversations is implausible for at least two reasons.¹³ First, the former employee's version of the telephone call is denied by the Project Officer who corroborates the Senior Project Officer's version.

The Project Officer himself had received a call from the former employee asking him to relay a message to the Senior Project Officer asking him to call the former employee. The Project Officer was present when the Senior Project Officer returned the former employee's call. The return call was by means of a conference call, and the Project Officer heard the entire conversation. The Project Officer, who is now retired from the SDA, told the SDA OIG in his interview, not that the Senior Project Officer was seeking information about settlement numbers, but that the former employee, who had initiated the contact, was asserting that the Health and Safety Amendment had been negotiated to a final settlement at the November 17, 2006 meeting. The Project Officer also told SDA OIG that the former employee directed the SDA to his left behind files to

¹³ Also, it is undisputed that the Senior Project Officer did not participate in the November 17, 2006 negotiation of the Health and Safety Amendment and thus would have had no reason to take notes of that meeting.

prove that point. The Project Officer told SDA OIG that the files did not prove the settlement had been finalized.

Second, the former employee's version of the April 30, 2007 telephone call is refuted by two internal e-mails the Senior Project Officer had sent to SDA Assistant Counsel. In an e-mail dated April 4, 2007, the Senior Project Officer wrote that the PMF is seeking to supplement its earlier amendment but without having performed any additional work. The Senior Project Officer also wrote in that e-mail that this amendment was discussed by the PMF and by the SDA, but there was no final settlement.

Soon after that e-mail, SDA Assistant Counsel met with the PMF, and the meeting resulted in a letter from the PMF on April 9, 2007. In that letter, the PMF asserted that the Health and Safety Amendment had been negotiated to an agreed upon figure of \$642,990 on November 17, 2006.

The Senior Project Officer then sent an e-mail dated April 13, 2007 to the SDA Assistant Counsel to refute the PMF's letter of April 9, 2007. The Senior Project Officer disputed the PMF's contention that the amendment had been resolved. To the contrary, the Senior Project Officer asserted in the e-mail that no final number was agreed to for the Health and Safety Amendment.

Thus, contrary to the former employee's version of the reason for the April 30, 2007 telephone call with the former employee, the e-mails show that before the April 30,

2007 telephone call, the Senior Project Officer was aware of the numbers that had been discussed at the November 17, 2006 meeting (and was aware from the PMF's letter that the PMF contended that the amendment had been settled for \$642,990). Therefore, there would have been no reason for the Senior Project Officer to call the former employee on April 30, 2007 to ask for this information.

Moreover, the e-mails between the Senior Project Officer and the SDA Assistant Counsel are consistent with the version advanced by the Senior Project Officer, that is: that the amount, if any, to be paid to the PMF for the Health and Safety Amendment had not been resolved at the negotiations of November 17, 2006 and that the former employee called on April 30, 2007 to represent, appear for and/or negotiate on behalf of the PMF to achieve a result beneficial to the PMF.

The evidence indicates that the Senior Project Officer's version of the incident is the more plausible version. That being the case, the evidence indicates that the former employee contacted the SDA Senior Project Officer to represent the PMF's interests in a matter in which the former employee was directly and substantially involved when he was an SDA employee. Thus, the employee's conduct appears to implicate ethics requirements.

C. Solicitation of Employment

The evidence gathered by OIG SDA indicates that while still employed with the SDA and while the now-former employee had direct and substantial contact with the

PMF, a vendor doing business with the SDA, the now-former employee sought post-SDA employment with the PMF. The Plain Language Ethics Guide prohibits an employee who has direct and substantial contact with vendors doing business with the State from “circulating resumes or in any manner seeking employment with those firms while you are still in State service.” The rule further states that if the employee is solicited for employment by a vendor, “that solicitation must be disclosed immediately” to management and to the ethics liaison officer.

The PMF provided SDA OIG the opportunity to review portions of the former SDA employee’s personnel file. The file contained an undated letter from the former employee¹⁴ expressing an interest in employment by the PMF and attaching his resume, and that the letter had been a follow-up to a telephone call he initiated. His letter states that he has decided “to move on” and that he “would like to play a role in the redevelopment of the World Trade Center complex.”¹⁵ The former SDA employee received a written offer for employment from the PMF on January 5, 2007. The former employee’s last day of employment by the SDA was January 19, 2007. He began work for the PMF on January 22, 2007 as the Senior Program Manager at the World Trade Center Transportation Hub.

The former employee never informed the SDA Ethics Liaison Officer of his interest in the position with the PMF, his application to the PMF, or of the PMF’s offer of

¹⁴ The letter was undated, but the former SDA employee had completed an employment application with the PMF on December 20, 2006.

¹⁵ This is another project on which the PMF was also working.

employment. Indeed, the evidence tends to indicate that he attempted to mislead SDA management about where he was going to work when he left the SDA, since he told them he was going to work on the Freedom Tower construction project in New York City. Since the Port Authority is the lead agency on the project, there was an implication that he would be working for the Port Authority. Reinforcing the implication was his failure to perform his affirmative duty to inform SDA management that he was going to work for a company that did business with the SDA, that was also a consultant to the Port Authority on the Freedom Tower project.

In addition, shortly after leaving the SDA, the now-former employee attended an SDA retirement party for another SDA employee. While at that party, the now-former employee wore an identification badge issued by the Port Authority, further leading SDA employees to believe that he was employed by the Port Authority. It was not until months later that SDA management learned that the former employee was working for the PMF.

Many months later, when SDA OIG interview the former employee he admitted to SDA OIG investigators that he had, in fact, telephoned the PMF to inquire about employment with the PMF after he had seen an internet posting for positions, and that this telephone call had occurred while he was working at SDA. He stated to the SDA OIG that other than this PMF, he did not contact any other potential employers. At best, at the time the former SDA employee contacted the PMF about employment, the PMF

contract amendments had only recently been discussed and had not been settled. Thus, the former SDA employees conduct would appear to implicate ethics requirements.

D. Undue Favorable Treatment of PMF

SDA OIG's investigation did not uncover evidence indicating that the former employee offered to support the PMF's amendment in return for post SDA employment position with the PMF. At the time of the former employee's resignation from the SDA, there were no concerns at the SDA that he had engaged in improper conduct. Therefore, in the normal course, the SDA erased the hard drive on the former employee's SDA-issued computer upon his resignation as an SDA employee in anticipation of re-issuing it to another employee. Consequently, potentially relevant information was lost.

The SDA OIG reviewed the e-mails and documents contained in the SDA's shared drives, but found nothing there suggesting that before leaving the SDA, the employee was in contact with other potential future employers about working for them or that he was giving them undue favorable treatment.

As stated above, the SDA OIG review of portions of the PMF's personnel file for the now-former SDA employee revealed an undated letter from the employee to the PMF with a resume enclosed seeking an offer of employment with the PMF.¹⁶ The letter appears to have been written while the now-former SDA employee was still working for

¹⁶ The recipient of the letter is himself a former employee of the SDA working for the PMF.

the SDA and as a follow-up to a telephone call initiated by him but at least before December 20, 2006, the date, according to the PMF's personnel file, of the former SDA employee's application for employment with the PMF and his PMF job interview.

Presumably the letter and resume could have been written at any time before December 20, 2006, and in the worse case scenario, before the former employee took part in the negotiations of the PMF's Amendments at the November 17, 2006 meeting. Even if the former employee had written the application letter prior to November 17, 2006 the meeting with the PMF representatives, other evidence gathered during OIG's investigation does not provide a sufficient basis to conclude that the former employee had offered to or had benefitted the PMF in return for post-SDA employment.

As described above, the evidence gathered by the SDA OIG showed that SDA upper management, not the former employee, had asked the PMF to supply documents so that SDA could obtain a credit from the PMF for suspended projects. It was upper management's decision that initiated the opportunity for the PMF to seek additional compensation for the Health and Safety amendment and other amendments. The evidence gathered by OIG did not indicate that the former employee became involved in the amendment negotiations until management agreed to consider the PMF's amendments.

While by this time, the former employee was viewed as the lead negotiator on the PMF's amendments, there were several other SDA staff, both below and above him in

status, working on the project. Two staff, senior to the former SDA employee, were present at the November 17, 2006 meeting. Even the Senior Project manager, who objected to the Health and Safety Amendment, did not object to the negotiations on the other amendments. Indeed, although OIG does not opine on this matter, SDA managers appeared to hold the belief that there was a valid reason to consider the Health and Safety Amendments – PMF expenses due to unforeseen delays at no fault to the PMF, and eventually this Amendment was settled many months after the former employee had left SDA employment.

In any event, the former SDA employee did not approve the Health and Safety Amendment of the PMF. No final settlement was reached during the former SDA employee's negotiation of this amendment during the meeting of November 17, 2006 or even during his SDA employment. Instead, the matter was not resolved until many months after the former employee left the SDA, and after it was known that he was a PMF employee. No one raised an issue at that time that the former employee had shown undue favoritism toward the PMF during the November 17, 2006 meeting. The PMF's Health and Safety amendment was negotiated to a conclusion, and it was then submitted to and approved by the SDA Board in the amount of \$643,269 on August 15, 2007.¹⁷

The evidence gathered by the SDA OIG does not appear to indicate that the former SDA employee had offered to support the PMF's Health and Safety amendment

¹⁷ The PMF requested the additional compensation to cover two years of PMF time incurred because of delays in the Health and Safety work that were beyond the PMF's control. The PMF and the SDA compromised, with the SDA agreeing to pay for the entire increase in the construction cost (including the escalation in the price of materials) and the PMF agreed to waive its claim for the delays.

in exchange for employment with the PMF; or that the PMF had solicited the then-SDA employee to support the Health and Safety amendment in exchange for a promise of employment with the PMF. Nonetheless, because of the nature of these concerns, SDA OIG is referring this concern to the Division of Criminal Justice in the Office of the New Jersey Attorney General for its determination of whether further action is warranted.

IV. SUMMARY OF CONCLUSIONS

A. Conduct Appears to Implicate New Jersey Statutes and Ethics Codes

The evidence gathered during SDA OIG's investigation indicates that the former SDA employee telephoned the SDA to represent, appear for, or negotiate on behalf of his new employer in a matter in which he had been substantially and directly involved prior to his separation from the SDA, conduct that would appear to implicate New Jersey statutes and ethics codes.

B. Conduct Appears to Implicate New Jersey Ethics Codes

The evidence gathered during SDA OIG's investigation indicates that while employed by the SDA, the former employee had solicited employment with a company who was then doing business with the SDA, and in fact was a company with whom the employee had been engaged in active negotiations on behalf of the SDA, conduct that would appear to implicate ethics codes.

C. Conduct Does Not Appear to Implicate New Jersey Criminal Statutes

The evidence gathered during SDA OIG's investigation does not indicate that while employed by the SDA, the former SDA employee gave undue favorable treatment to companies doing business with SDA in return for a promise of or in hopes of future employment.

V. REFERRALS

A. Referral to the Division of Criminal Justice

The SDA OIG will refer this matter to the Division of Criminal Justice to determine whether the conduct described herein warrants further action by that entity.

B. Referral to the State Ethics Commission

The SDA OIG has referred this matter to the State of New Jersey State Ethics Commission to determine whether the conduct described herein warrants further action by that entity.

VI. RECOMMENDATION

The SDA should notify all current employees that if they are contacted by former SDA employees who seek to discuss pending SDA matters, the employee should immediately terminate the conversation and notify SDA management of the contact by the former employee so that it can be confirmed that the former employee is not contacting the SDA to represent, appear for, or negotiate on behalf of the new employer in a matter in which the former employee had been substantially and directly involved prior to his separation from the SDA.