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Whistle-blowers accuse CSU over contracts

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Three former senior employees in the California State University labor relations office say they were forced out of their jobs after questioning the way Chancellor Charles Reed hired and paid a high-profile labor consulting firm, which so far has received more than \$2 million, a Chronicle review of documents shows.

The chancellor's office hired the firm in December 2005 without going to competitive bids, and two of the three former employees say their firings were directly related to questioning the contracts as a misuse of public funds.

The third employee has signed a legal settlement that prevents him from discussing the case, but others said his departure also was because he questioned the no-bid contracts awarded to labor-relations consultant C. Richard Barnes & Associates, LLC, of Lawrenceville, Ga.

"It's a sweetheart contract," said Paul Verellen, a former CSU labor attorney and one of the three who lost his job at CSU headquarters in Long Beach. He has filed a whistle-blower complaint with the Bureau of State Audits.

"My concern is that they (Barnes & Associates) were not qualified," said Joel Block, a second CSU labor lawyer, who was fired after contacting a member of CSU's governing Board of Trustees about the deal. Block said that although Barnes was a well-known mediator, he had limited experience as an advocate for management in labor relations.

For more than two years, CSU has contracted with Barnes to represent the university in negotiations with employee unions and to provide oversight in CSU arbitration cases with faculty. The firm is headed by Richard Barnes, a former director of the Federal Mediation and Conciliation Service.

His firm's CSU contracts, totaling about \$2.45 million, continue through the end of this year.

Chancellor's defense

Reed, who has defended the Barnes contracts, said the former employees were let go as part of a staff reorganization. He insists that his labor-relations unit is operating more smoothly without them.

"We have let several people go. They are very unhappy, but I'm happy because I've seen such a big turnaround" in operations, the chancellor said.

"I frankly got tired of all of the labor-relations problems that we were having," Reed told The Chronicle. "I asked somebody who the very best labor person was in the country, and it turned out to be a guy in Atlanta who had worked in the Clinton administration and had worked in the first two years of the Bush administration. ... And I asked him if he would help us with our labor problems."

'Best-spent resources'

He said the Barnes contracts represent "some of the best-spent resources" by the CSU office in the past decade.

Under state law and CSU policy, university officials must obtain the best value for public funds by giving qualified bidders a fair chance to win contracts. There are exceptions: No bids are needed in emergencies, for contracts under \$50,000 or where the contractor is providing unique goods or services that cannot be found elsewhere.

The first contract awarded to Barnes in November 2005 fell under the \$50,000 threshold requiring competitive bids. But subsequent contracts and amendments did exceed that amount and prompted CSU staff members to raise questions, the former employees told The Chronicle.

Reed, who has been chancellor of the nation's largest public university system since 1998, signed an initial letter of agreement with Barnes, outlining "Phase One" of a project to improve CSU's labor relationships. That \$44,000 deal, signed on Nov. 11, 2005, included a fixed rate of \$4,000 per day for Barnes, plus "aggressively managed" travel expenses and other miscellaneous "out of pocket" expenses.

No competing bids

Six weeks later, on Dec. 29, 2005, the CSU procurement director signed a \$496,000 contract for Barnes' next phase. That was followed by a \$610,500 contract extension in September 2006 and a \$1.3 million extension in April 2007. All were handed to Barnes without competing bids, documents show.

The documents do not provide a clear explanation of why the Barnes firm received preferred treatment, although a memo from a CSU senior administrator commenting on the September 2006 extension recommended approval because the firm "is uniquely able to provide these services as they have worked for 11 months to establish working relationships with the union organizations."

CSU officials insist that no laws were broken, and Jeffrey Bleich, chair of the CSU Board of Trustees, defended the chancellor's business operations.

"There was concern among the board with respect to our labor relations, and those have improved dramatically since our retention of Richard Barnes," Bleich said. "To me, he's worth his weight in gold, and he's not a diminutive guy."

'A banner year'

Executive Vice Chancellor Richard West credited Barnes with making CSU labor agreements work. "We've had a banner year of working with the CSU's labor unions," he said. "

West said the university's business relationship with Barnes is legal, given the labor consultant's reputation and credentials and the urgent need to sort out CSU labor problems. "The university has the right to determine to award a contract on a no-bid basis," he said. "It was a legitimate no-bid contract."

Under state law and CSU policy, university officials must produce a written justification prior to issuing a no-bid contract or deciding not to request proposals from potential bidders.

According to internal documents, CSU officials have acknowledged violating that rule.

On Jan. 28, 2008, procurement director Tom Roberts acknowledged in a CSU form that an error had been made in not providing a written justification for the December 2005 contract. He then gave a retroactive justification for why the services needed could be performed only by the Barnes firm, noting that "no other individual or firm possesses the background of qualification of Barnes."

Interim Vice Chancellor Gail Brooks also noted in a Jan. 31, 2008, memo that officials had violated the policy. But she dismissed it as a harmless error, saying "the awarding of the contract did not constitute a misuse of public funds because the individuals involved in the awarding of the contract had the authority to approve the transaction."

A related CSU policy requires officials to evaluate at least three other vendors and explain why they were rejected before awarding a no-bid contract. The Chronicle review of documents found no record that other vendors had been considered. There is no shortage of such consultants. Professional directories list scores of labor-relations experts with experience in dispute resolution, management representation and higher education.

Others stressed that caution should be used in awarding no-bid contracts under such circumstances.

"If there isn't justification before the fact, then you really don't have a basis to make that decision," said Dave Longanecker, executive director of the Western Interstate Commission for Higher Education. "And the issue is what it looks like when it's exposed. Does it look like it can pass muster or the laugh test, and if not, then a prudent manager ought to say, 'Let's go to bid.' "

Barnes would not discuss his CSU contracts, saying "I have a relationship with my client, which is governed by rules of confidentiality. I suggest you contact the contracting officer."

Roberts, the chancellor's chief of procurement, declined to be interviewed.

Since November 2005, the state treasury has paid invoices to Barnes' firm for \$4,000 to \$5,000 a day for consulting fees, plus such expenses as first-class air travel, premium car rentals, hotel room service, valet laundry, limousine service, 25 percent tips, expensive dinners for up to four guests, and entertainment expenses - at times without any notation of who was being entertained or the purported business purpose.

Checking receipts

Vice Chancellor West said he would look into those occasions when Barnes submitted expense receipts for first-class airfare to determine if the consultant had personally paid for upgrades. "The university doesn't normally pay for first-class travel," he said.

The latest Barnes amendment specifies payment of \$155,167 in "salary and benefits" to Barnes' partner, John Swarbrick, for 2007, and payment of \$244,387 in "salary and benefits" to Swarbrick this year.

Block, a labor lawyer who worked in the chancellor's office, said he was fired in January after he voiced his concern about the no-bid contracts to Bleich, the CSU Board of Trustees chair. The trustee said he passed along to administrators the concerns of a couple of CSU employees who had contacted him about the Barnes contracts. He said he did not pass on their names.

Block said he was initially suspended without pay and told in an e-mail from a senior manager that his contacting a trustee without first notifying the chancellor "warrants nonretention." He was formally fired 15 days later.

Verellen, another labor lawyer who worked for the chancellor's office, is preparing to file a lawsuit against Reed and the CSU. He said Reed fired him in March, shortly after he filed a whistleblower complaint regarding the chancellor's alleged misuse of public funds in the Barnes deal.

'Undermines integrity'

"All of this undermines the integrity of our government and how dollars should be used efficiently and effectively," said state Sen. Leland Yee, D-San Francisco, a watchdog on higher education. "What surprises me about these institutions of higher education is that they're supposed to be the role model for our students.

"These whistle-blowers are important to our system because they're a safety valve for us," Yee added. "If we don't have some of these good civil-servant workers speak out, the system won't run efficiently. For them to be punished has a chilling effect for everyone in state employment."

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