

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 10-069

STIPULATED FACTS,
CONCLUSIONS AND ORDER

STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

I. PROCEDURAL FACTS

1.1. In August 31, 2010, the Executive Ethics Board received a referral from the State Auditor's Office alleging that [REDACTED] Department of Natural Resources, violated the Ethics in Public Service Act by conducting activities incompatible with public duties, having a financial interest in a transaction, receiving/providing a special privilege to vendors, and using state resources for his personal benefit. On March 16, 2012, the Board found that there was reasonable cause to believe that [REDACTED] violated the Ethics in Public Service Act.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

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1.3. [REDACTED] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000.00, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] from all further ethics proceedings against him under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

II. FINDINGS OF FACT

2.1. [REDACTED] has worked for the DNR as a Parts Specialist since 1991 and was so employed for all times pertinent to this matter.

2.2. At all times pertinent to this matter, [REDACTED] was working at the DNR Tumwater Compound. [REDACTED] was one of two employees charged with ordering, billing and receiving parts and materials used in the maintenance of DNR vehicles, vessels, and heavy equipment. As such, the Washington State Purchasing Manual identifies him as "purchasing personnel" thereby requiring him to abide by the Purchasing Manual.

2.3. The Office of State Procurement (OSP) sets limits on an agency's purchasing authority, giving it the authority to purchase up to \$10,000.00. Any purchase of \$10,000.00 or more must be sent through the Department of General Administration for competitive bids.

2.4. The OSP states the purchase of items from a vendor without a state contract cannot exceed a specific amount. During the times pertinent to this matter, that amount was \$3,300.00. Currently the amount is \$5,000.00.

2.5. The purchases of the same and/or similar items in excess of \$3,300.00 in a fiscal year require a contract and competitive quotes. Purchases in excess of \$10,000.00 require purchase authority from the DNR purchasing agent. ██████████ told investigators that he was aware of these requirements, but did not comply with them.

2.6. The DNR investigation revealed that ██████████ used Industrial Specialties primarily for the supplies he ordered for the shop. ██████████ is listed with Industrial Specialties as the DNR contact person.

2.7. Industrial Specialties did not have a state contract for any times pertinent to this matter.

2.8. The DNR investigation revealed that in 2008, DNR spent \$45,044.00 on supplies purchased through Industrial Specialties. Evidence indicated that Industrial Supplies overcharged DNR by at least 30 percent, and in some cases, as high as 300 percent on these supplies.

2.9. In the fiscal years 2007 and 2008, DNR overpaid \$50,134.00 for items purchased through Industrial Specialties for items that DNR could have purchased through the approved contracted vendor.

2.10. DNR had contract vendors in place for the items that ██████████ would order from Industrial Specialties, yet there was little use of those contracted vendors and there was no documentation to explain why these vendors were not used. Some of the items purchased from Industrial Specialties were marked up beyond reason.

2.11. ██████████ and Marty Stepan, the owner of Industrial Specialties, are friends. They would go hunting for weeks at a time, spend time together riding quads (all terrain vehicles with four wheels) and occasionally meet for drinks after work.

2.12. ██████████ has purchased at least four quads from Industrial Specialties since 2004. At the end of 2008, ██████████ purchased two Arctic Cat Quads from Industrial Specialties. ██████████ told coworkers that he got a "screaming deal" only paying \$1,800.00/quad. The public price for the same quad was a little over \$3,000.00.

2.13. [REDACTED] also ordered supplies from BG WagonMaster (WagonMaster), even though WagonMaster did not have a contract to do business with the State. From March 2007 to November 2008, [REDACTED] purchased \$4,334.30 of supplies from WagonMaster. The sales director and account manager of WagonMaster is Jeff Cline, the cousin of [REDACTED] wife. [REDACTED] told investigators that he told Jason Wise and Curtis Vaughn of this familial relationship.

2.14. On May 2002, Elias Garcia, Equipment Service Manager, sent out a directive to Equipment Service Staff related to personal purchases delivered to the DNR Compound. The directive stated, "Effective immediately, personal purchases are not to be delivered to the compound. Arrangements must be made for the delivery to take effect at places other than the compound. This directive is to comply with the State's Auditor's recommendation on February 25, 2002."

2.15. [REDACTED] told investigators sometime in November 2008, he drove a friend's vehicle to the compound and had Affordable Autoglass replace the windshield on site. He went on to say, that no money ever changed hands; the windshield was covered under warranty/insurance. However, having the work done at the shop was a direct violation of the above directive from Mr. Garcia.

2.16. [REDACTED] is a good friend of Mike Darrah, the owner of Affordable Autoglass.

2.17. Affordable Autoglass does not have a contract with the state to repair/replace windshields. During the time pertinent to the investigation, Safelite Autoglass had a convenience contract with the state, yet evidence indicates that Affordable Autoglass replaced 77 windshields for DNR in fiscal year 2008, while Safelite only replaced one.

2.18. For a 22-month period, Affordable Autoglass overcharged the state by \$8,400.00 when compared to the pricing available through the contract the state had with Safelite Autoglass. No evidence was found to show that there were any documented or approved exceptions to purchasing other than through a state contract. Evidence does indicate that the

purchases made through these non-contracted vendors were by and/or through the direction of [REDACTED] and were contrary to agency policy and purchasing directives.

2.19. In 2008, the DNR Tumwater Compound spent \$15,357.49 on windshield repair/replacement by Affordable Autoglass, exceeding the \$10,000.00 limit requiring a contract to be executed. DNR did not have a contract with this vendor. Safelite Autoglass has had a state convenience contract to repair/replace windshields since February 1, 2007. While the contract with Safelite is not a mandatory contract, the contract allows for significant savings, yet in 2008, the DNR Tumwater Compound only used Safelite Autoglass once.

2.20. Two coworkers stated that Mike Darrah was in a meeting with [REDACTED] Jason Wise, and Jerry Biscay. During this meeting, the owner of Affordable Autoglass, Mike Darrah, told them that he would give them \$20.00 in a "kickback" for every DNR windshield they sent to him for replacement.

2.21. A coworker told investigators stated that Novis and Safelite were "chased out" from coming to the compound for windshield work after Affordable Autoglass started doing business at the Tumwater DNR Compound.

2.22. At some time pertinent to this matter, [REDACTED] had Affordable Autoglass replace all of the glass in a privately owned truck that he was personally rebuilding.

2.23. On May 21, 2008, [REDACTED] created a work order (#34426) to have Affordable Autoglass replace a windshield in a DNR vehicle. On May 30, 2008, DNR received the invoice (I005473) from Affordable Autoglass for \$211.05, indicating that the repair had been completed. The invoice was coded for payment by [REDACTED] and approved for payment by Mike Smith.

2.24. In July 2008, DNR received a complaint that the windshield had not been replaced and began an investigation. On July 28, 2008, photographs of the windshield on the DNR vehicle were taken revealing that the windshield was still damaged and the DNR stickers for 2007 and 2008 were still on it indicating that the windshield had not been replaced. Affordable Autoglass ignored DNR's request to provide a copy of the invoice.

2.25. On March 18, 2008, Affordable Autoglass submitted an invoice for payment of a windshield replacement and filler-(upper) identified on the invoice as a 2002 Chevrolet Silverado C1500, 2-door extended cab. Handwriting on the invoice identified the vehicle by equipment number – A2P-5410. The identified vehicle was a pool vehicle assigned to the maintenance shop. The invoice was attached to work order 33503. On the work order the vehicle was identified by equipment number A2P-5410, license number 17735E and V.I.N. – 1GCEC19Z02Z296754. The part number for the windshield listed on the invoice matched the invoice, but the filler was not listed on the work order. The total cost of repair matched the invoice. The actual miles listed on the work order were 81,039.

2.26. On April 29, 2008, Affordable Autoglass submitted an invoice for payment of a windshield replacement, filler, molding-right, and molding-left. The vehicle identified on the invoice is identified as a 2005 Chevrolet Silverado C1500, 2-door extended cab. Handwriting on the invoice identified the vehicle by equipment number- A2P-5410. Although this vehicle seems to be a different vehicle on the invoice, it was identified on the work order by equipment number A2P-5410, license number 17735E and V.I. N. – 1GCEC19Z02Z296754, which identifies the vehicle that had a windshield installed just 33 days earlier, except that the part numbers for the windshield and moldings are different. [REDACTED] was involved in preparing the work orders for both of these repairs. The actual miles were listed on the work order as 81,039, demonstrating this vehicle had not traveled one mile since that previous windshield was replaced.

III. CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. RCW 42.52.020 prohibits state a officer or employee from having an interest, financial or otherwise, direct or indirect, or engaging in a business or transaction or professional

activity, or incurring an obligation of any nature, that is in conflict of interest with the proper discharge of the state officer's or state employee's official duties.

3.4. RCW 42.52.030 prohibits a state officer or state employee, except as provided in subsection (2) of this section, from being beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

3.5. RCW 42.52.070 prohibits a state officer or employee from using his or her position to secure special privileges or exemptions for himself, or his spouse, child, parent, or other persons.

3.6. RCW 42.52.160 prohibits a state officer or employee from using state resources for personal benefit.

3.7. Based on Findings of Fact 2.1 – 2.26, Evidence indicates that Randy Sweet conducted activities incompatible with public service, had a financial interest in the transactions, provided and received special privileges, and used state resources, in violation of RCW 42.52.020, RCW 42.52.030, RCW 42.52.070, RCW 42.52.160, and WAC 292-110-010.

3.8. Under RCW 42.52.360, the Board is authorized to impose sanctions for violations to the Ethics Act. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

IV. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. Aggravating factors are: 1) the violations were continuing in nature, and 2) the violations significantly reduced the public respect for, and the confidence in, state government employees. It is a mitigating factor that [REDACTED] was terminated from his agency as a result of these violations.

V. AGREED ORDER

5.1. For the violation of RCW 42.52.020, RCW 42.52.030, RCW 42.52.070, and RCW 42.52.160, [REDACTED] will pay a civil penalty of seven thousand, five-hundred dollars (\$7,500.00).

5.2. The civil penalty of \$7,500.00 is payable to the Washington State Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

5.3. [REDACTED] shall cooperate with Board Staff in the pending matters regarding Jason Wise and Phillip Moller by providing an interview, and by providing sworn discovery responses and testimony as requested by Board Staff and/or the assigned Assistant Attorney General.

CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

[REDACTED] 6-12-2013
Respondent

Stipulated to and presented by:

Melanie deLeon 6-18-13
Melanie deLeon Date
Executive Director

ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is:

 ✓ ACCEPTED in its entirety;
 REJECTED in its entirety;
 MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 12th day of July, 2013.

 Lisa Marsh
Lisa Marsh, Chair

 Matthew Williams III
Matthew Williams III, Member

 Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

 Samantha Simmons
Samantha Simmons, Member

* I, accept/do not accept (circle one) the proposed modification(s).

 Respondent Date