



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF HOMELAND SECURITY (IDHS)
TITLE: IDHS POST-EMPLOYMENT
CASE ID: 2017-10-0234
DATE: December 31, 2018

Inspector General Staff Attorney Kelly Elliott, after an investigation by Inspector General Director of Investigations, Darrell Boehmer, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse, and wrongdoing in executive branch agencies of state government. IC 4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics violations within state government. IC 4-2-7-3.

On October 19, 2017, the OIG received a complaint alleging that former Indiana Department of Homeland Security (IDHS) employee Arvin Copeland (Copeland) violated the Code of Ethics' post-employment rule. The complaint alleged that Copeland retired from his position as Director of the IDHS Emergency Response and Recovery Division in July 2017 and thereafter accepted employment with Witt O'Brien's LLC (WO), a contractor with IDHS. The complaint further alleged that Copeland may have been involved in the negotiation and/or administration of WO's current contract with IDHS.

OIG Director of Investigations, Darrell Boehmer, conducted an investigation into the matter. Through the course of his investigation, Director Boehmer interviewed Copeland and other IDHS employees. Director Boehmer also obtained and reviewed IDHS contracts, personnel files, and emails.

I. Copeland's Position at IDHS

Director Boehmer learned that Copeland served as the Director of the IDHS Emergency Response and Recovery Division from April 2008 to July 28, 2017. According to his job description, Copeland was responsible for overseeing all emergency response operations as well as all disaster recovery operations within the State of Indiana. He was also responsible for supervising, administering, and coordinating the overall state response to and recovery from all disasters and emergencies that impacted the State of Indiana. His responsibilities included supervision and management of the personnel in the IDHS Emergency Response and Recovery Division.

II. IDHS's Contract with WO

Director Boehmer reviewed contracts between IDHS and WO. He found that on July 30, 2008, WO entered into its first contract with IDHS to provide disaster assistance. The 2008 contract was amended eleven times for various reasons and expired on December 31, 2014.¹

Director Boehmer found that on May 11, 2015, WO entered into a second contract with IDHS (the Contract) to provide disaster management services (EDS No. C44P-5-793B). The Contract term is from May 11, 2015 to May 13, 2019, and it has not yet been amended. According to the Contract, WO is to provide a wide range of disaster management, mitigation, and recovery professional services. Before WO is to start any work under the Contract, the Contract is to be amended to add a description of the project, the necessary funds, and any needed additional labor categories for that project.

The Contract consists of only one project at this time (Project #1). Under Project #1 of the Contract, WO is to assist the State with appeals and closeout of DR-1766, which relates to the

¹ Because IDHS's 2008 contract with WO expired in 2014, the OIG's investigation focused on IDHS's current contract with WO.

disaster declaration made by federal authorities after severe storms and flooding in Indiana in 2008. The Contract includes \$50,000 in funds for Project #1.

III. Copeland's Negotiation of the Contract

Director Boehmer reviewed Copeland's involvement in the negotiation of the Contract prior to its execution. According to records obtained by Director Boehmer, on August 5, 2014, the Indiana Department of Administration (IDOA) issued Request for Proposal (RFP) 15-005 on behalf of IDHS for disaster management services on a stand-by basis. Five vendors submitted proposals to RFP 15-005, including WO. Copeland and three other members of his staff made up an IDHS evaluation team that scored the vendors' proposals. Copeland and the other members of the evaluation team provided their highest score to WO. IDOA then completed additional scoring of the vendors.

Director Boehmer reviewed numerous emails sent or received by Copeland regarding RFP 15-005. On November 21, 2014, an IDOA employee (IDOA Employee) emailed Copeland and Phillip Brown (Brown), the Assistant Director of the IDHS Emergency Response and Recovery Division, a copy of IDOA's Award Recommendation Letter for RFP 15-005. In the letter, IDOA recommended selecting a different contractor to begin contract negotiations for disaster management services for IDHS. With both IDOA and IDHS scoring completed, a different contractor, and not WO, had the overall highest score. The IDOA Employee requested that Copeland and Brown review the award recommendation.

On November 21, 2014, Copeland emailed David Kane, the Director of IDHS (Director Kane), regarding IDOA's award recommendation. In the email, Copeland stated that the IDOA Employee informed him that IDHS could have a final weigh in on IDOA's award recommendation. Copeland further stated, "It is clear by the scoring of IDHS [that] Witt O'Brien's was the best

choice.” Copeland explained that IDOA agreed to hold off on their award recommendation until he had an opportunity to meet with Director Kane.

On November 25, 2014, Copeland met with Director Kane. Thereafter, Director Kane emailed Copeland and stated he agreed with Copeland’s recommendation of WO based on their conversation the previous day. Director Kane requested Copeland articulate in writing the justifications for why IDHS should award the contract for disaster management services to WO.

Director Boehmer found that Copeland and Brown co-authored a letter entitled “Justification for Award of Disaster Services Contract” (Justification Letter). The Justification Letter outlined why WO would be the best choice for a disaster management services contract. Copeland provided a copy of the Justification Letter to the IDOA Employee. Copeland also later met with the IDOA personnel to discuss IDOA’s award recommendation.

On January 5, 2015, the IDOA Employee emailed Copeland and Brown a copy of IDOA’s second Award Recommendation Letter for RFP 15-005, which recommended selecting WO to begin contract negotiations to provide disaster management services for IDHS. The letter provided an award summary, which outlined why IDOA recommended WO be awarded the contract. The majority of the award summary included exact phrasing from the Justification Letter that Copeland had helped author. In the email, the IDOA Employee requested that Copeland and Brown send him approval of the second award recommendation. On this same date, Copeland emailed IDOA’s second Award Recommendation Letter for RFP 15-005 to an employee in the Governor’s Office and carbon copied Director Kane. Copeland stated in the email, “If there is no objection, I recommend Director Kane approve the attached recommendation.”

IDHS subsequently approved IDOA’s second award recommendation for RFP 15-005, which recommended IDHS award the disaster management contract to WO.

On January 30, 2015, Brown emailed Copeland twice regarding the Contract. Brown suggested that they put some funding in the Contract from DR-1766 to cover an appeals process. He suggested funding of \$50,000 for the matter. On this same date, Copeland responded to Brown's emails and stated, "I agree."

On April 14, 2015, WO signed the Contract. On May 11, 2015, an IDHS fiscal officer approved the Contract.

IV. Copeland's Administration of the Contract

Director Boehmer reviewed Copeland's involvement in the Contract's administration. He found that after the Contract was executed, Copeland provided requisition approval of funding for the Contract in the amount of \$50,000. According to the requisition, the purpose of such funds was to pay for management costs associated with DR-1766. WO was named as the vendor on the requisition.

Director Boehmer found that Copeland was involved in discussions with WO about potential projects. As noted above, before WO was to start work under the Contract, IDHS had to amend the Contract to add a description of the project, the necessary funds, and any needed additional labor categories for the project. On January 19, 2016, Copeland denied an offer by WO to provide assistance to IDHS for the outbreak of the avian flu. On August 25, 2016, Copeland denied an offer by WO to provide assistance to IDHS for the occurrence of tornadoes.

Director Boehmer found that Copeland was also involved in a decision regarding what services WO could render under the Contract in determining if IDHS needed to utilize another outside vendor (Vendor) for a particular matter. On May 5, 2016, Copeland responded to an email from Director Kane and provided information on utilization of the Vendor's services as it related to the Contract. On June 29, 2016, Copeland sent Director Kane a second email that WO attested

that they too could provide the same services as the Vendor. Copeland further stated that IDHS could pursue additional discussions with the Vendor, but he was “satisfied with [WO’s] answer.” IDHS staff advised Director Boehmer that they could not find any past or present contracts between IDHS and the Vendor.

Director Boehmer found that on January 23, 2017, Copeland provided a reference for WO to South Carolina’s procurement office, rating WO’s services for IDHS as good and stating he would hire WO again.

V. Copeland’s Employment with WO

Director Boehmer learned that Copeland left state employment on July 28, 2017. On September 15, 2017, Copeland accepted employment at WO for the position of Senior Recovery Consultant. Director Boehmer found no evidence that Copeland began employment negotiations with WO while he was employed with the State. He found that WO reached out to Copeland about an employment opportunity after Copeland left state employment.

Director Boehmer found no evidence that Copeland sought advice from IDHS’s ethics officer regarding his employment with WO. Copeland did not receive a post-employment waiver from his appointing authority. He also did not seek an informal advisory opinion from the OIG or a formal advisory from the Indiana State Ethics Commission (Commission) regarding employment with WO.

VI. Conclusion

On April 13, 2018, the OIG filed an ethics complaint against Copeland alleging that (1) he violated Ind. Code § 4-2-6-11(b)(2) when he began employment with WO after he engaged in the negotiation of the Contract and was in a position to make a discretionary decision affecting the outcome of the negotiation; and (2) he violated Ind. Code § 4-2-6-11(b)(2) when he engaged in

the administration of the Contract and was in a position to make a discretionary decision affecting the nature of the administration, all within one year of leaving state employment. The Commission found probable cause for the complaint on April 12, 2018.

Copeland entered into an agreed settlement with the OIG in which he admitted to both violations of Ind. Code § 4-2-6-11(b)(2) as alleged in the ethics complaint and agreed to pay a fine of \$7,000. The OIG filed an Agreed Settlement with the Commission on November 8, 2018, and the Commission approved it on December 13, 2018. Payment of at least \$3,500 of the fine is due by January 12, 2019. Payment of the remainder of the fine is due by February 11, 2019. Accordingly, this investigation is closed, pending receipt of the fine.

Dated: December 31, 2018

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General